

**Board of County Commissioners
Leon County, Florida**

Policy No. 96-1

Title:	Purchasing and Minority/Women Business Enterprise Policy
Date Adopted:	July 20, 2002
Effective Date:	July 20, 2002
Reference:	Chapter 274, Florida Statutes
Policy Superseded:	Policy adopted July 14, 1990; Revised September 10, 1991; Policy No. 96-1, "Purchasing Policy"; adopted January 16, 1996; Revised November 25, 1997; Revised February 24, 1998

It shall be the policy of the Board of County Commissioners of Leon County, Florida, that Policy No. 96-1, "Purchasing Policy," adopted by the Board of County Commissioners on January 16, 1996, be revised and hereby adopted in its place, to wit:

**BOARD OF COUNTY COMMISSIONERS
LEON COUNTY**

**Purchasing
And
Minority/Women Business Enterprise
Policy**



Revised July 30, 2002

Purchasing and Minority/Women Business Enterprise Policy

TABLE OF CONTENTS

Section 1	Purpose	1
Section 2	Application of Policy	1
	A. Contracts	1
	B. Activities	1
	C. Exemptions from the Purchasing Policy	1
Section 3	Definitions	3
Section 4	Authority of Purchasing Director	9
Section 5	Purchasing Categories; Threshold Amounts	10
	5.01 Petty Cash/Reimbursements	11
	5.02 Field Purchase Orders	11
	5.03 Small Purchases	11
	5.03.1 Warehouse Operations	12
	5.04 Blanket Purchase Orders	12
	5.05 Field Quotes	12
	5.06 Purchasing Quotes	12
	5.07 Informal Bids	13
	5.08 Competitive Sealed Bidding	13
	A. Conditions for Use	13
	B. Invitation to Bid	13
	C. Public Notice	14
	D. Bid Opening	14
	E. Bid Acceptance and Evaluation	14
	F. Bid Agenda Item	15
	G. Correction or Withdrawal of Bids; Cancellation of Awards	15
	H. Multi-Step Sealed Bidding	15
	I. Award	15
	J. Cancellation of Invitations for Bids or Requests for Proposals	16
	K. Disqualification of vendors	16
	L. No bids received	17
	M. Local Preference	17

Purchasing and Minority/Women Business Enterprise Policy
TABLE OF CONTENTS (continued)

5.09	Competitive Sealed Proposals	17
5.091	Professional Architectural, Engineering, Landscape Architectural, and Land Surveying Services.	17
A.	Public Announcement	17
(1)	Scope of Project Requirements	17
(2)	Review of Project Requirements	18
(3)	Distribution of Project Requirements	18
(4)	Resolicitation	18
(5)	Modification Prohibition	18
(6)	Reuse of Existing Plans	18
(7)	Local Preference	18
(8)	Exemptions	18
B.	Selection Committee Membership and Evaluation	19
(1)	Three Member Committee Composition	19
(2)	Five Member Committee Composition	19
(3)	Public Meetings	19
(4)	Selection Committee Evaluation	19
(5)	Short listing	19
(6)	Interviews and Board Approval	20
C.	Negotiation Staff	20
(1)	Negotiation Committee Membership	20
(2)	Negotiation	20
(3)	Continuing Contracts	21
5.092	Other Competitive Sealed Proposals	21
A.	Conditions for Use	21
B.	Consultant's Competitive Negotiation Act	21
C.	Board Approval	21
D.	Public Notice	21
E.	Evaluation Factors	21
F.	Proposal Cancellation or Postponement	21
G.	Revisions and Discussions with Responsible Offerors	21
H.	Award	22
I.	Local Preference	22
5.10	Sole Source Purchases	22
A.	Sole Source Certification	22
B.	Additional Purchases from Certified Sole Source	22

Purchasing and Minority/Women Business Enterprise Policy
TABLE OF CONTENTS (continued)

5.11	Emergency Purchases	22
	A. Authorization During Normal Business Hours	22
	B. Authorization Outside of Normal Business Hours	22
	C. Documentation and Approval	22
	D. Mutual Aide Agreements	23
5.12	Cooperative Purchasing	23
	A. State Contract	23
	B. Federal Supply Service	23
	C. Other Public Procurement Units	23
5.13	Protested Solicitations and Awards	23
	A. Right to Protest	23
	B. Filing A Protest	23
	C. Settlement and Resolution	24
	D. Appeal of Purchasing Director's Decision	24
	E. Procurement Appeals Board	25
	F. Stay of Procurement During Protests	26
5.14	Contract Claims	26
	A. Authority Settle Bid Protests and Controversies	26
5.15	Remedies for Solicitation or Awards in Violation of Law	27
	A. Prior to Bid Opening or Closing Date for Receipt of Proposals	27
	B. Prior to Award	27
	C. After Award	27
Section 6.0	Contract Administration	28
6.1	Contract Provisions	28
	A. Standard Contract Clauses and Their Modification	28
	B. Contract Clauses	28
6.2	Price Adjustments	29
	A. Methods of Price Adjustment	29
	B. Cost or Pricing Data Required	29

Purchasing and Minority/Women Business Enterprise Policy
TABLE OF CONTENTS (continued)

6.3	Change Orders/Contract Amendments	29
	A. Change Orders	29
	B. Contract Amendments	29
6.4	Assignments of Contracts	29
6.5	Right to Inspect Plant	29
Section 7.0	Rights of Board of County Commissioners	30
Section 8.0	County Procurement Records	30
	A. Procurement Files	30
	B. Retention of Procurement Records	30
Section 9.0	Specifications	30
9.1	Maximum Practicable Competition	30
9.2	Use of Brand Name or Equivalent Specifications	30
	A. Use	30
	B. Designation of Several Brand Names	31
	C. Required Characteristics	31
	D. Nonrestrictive Use of Brand Name or Equivalent Specifications	31
	E. Determination of Equivalents	31
	F. Specifications of Equivalents Required for Bid Submittal	31
9.3	Brand Name Specifications	31
	A. Use of Brand Name Specifications	31
	B. Competition	31
Section 10.0	Ethics in Public Contracting	31
10.1	Criminal Penalties	31
10.2	Employee Conflict of Interest	31
	A. Participation	32
	B. Blind Trust	32
10.3	Contemporaneous Employment Prohibited	32

Purchasing and Minority/Women Business Enterprise Policy
TABLE OF CONTENTS (continued)

10.4	Use of Confidential Information	32
10.5	Waivers from Contemporaneous Employment Prohibition and Other Conflicts of Interest	32
10.6	Gratuities and Kickbacks	32
	A. Gratuities	32
	B. Kickbacks	33
	C. Contract Clause	33
10.7	Sanctions	33
	A. Employee Sanctions	33
	B. Non-Employee Sanctions	33
10.8	Recovery of Value Transferred or Received in Breach of Ethical Standards	33
	A. General Provisions	33
	B. Recovery of Kickbacks by the County	33
Section 11	Federal Policy Notice	34
11.1	Patents	34
	A. Notice to Contractor	34
	B. Notice by Contractor	34
11.2	Notice of Federal Public Policy Requirements	34
	A. Applicability	34
	B. Notice	34
Section 12	Insurance Requirements	34
	A. Minimum Requirements	34
	B. Certificates of Insurance	35
	C. Cancellation Clause	35
	D. Change of Insurance Requirements	35
Section 13	Bonds and Deposits	35

Purchasing and Minority/Women Business Enterprise Policy
TABLE OF CONTENTS (continued)

13.1	Types of Bonds and Deposits	35
	A. Combination Payment and Performance Bond	35
	B. Performance Bond	35
	C. Payment and Material Bond	35
	D. Warranty Bond	35
	E. Guaranty of Good Faith Deposit (Bid Deposit)	36
	F. Irrevocable Letter of Credit	36
	G. Retention of Payments	36
13.2	Amount of Bond or Deposit	36
	A. Amount of Bond	36
	B. Exceptions to Amount of Bond	36
13.3	Processing of Bonds and Deposits	37
	A. Responsibility for Securing Bonds	37
	B. Licensure of Bonding Company	37
	C. Review of Bonds by County Attorney	37
	D. Failure to Provide Required Bond	37
	E. Filing of Bonds	37
	G. Deposits	37
Section 14	Payment to Vendors	37
	A. Outright Purchases	37
	B. Contractual Purchases	37
	C. Prompt Payment Act	37
Section 15	Authorization to Debar or Suspend Vendor(s)	38
	A. Suspension	38
	B. Debarment	38
	C. Causes for Debarment	38
	D. Notice of Decision	39
15.1	Appeal of Decision to Debar or Suspend	39

Purchasing and Minority/Women Business Enterprise Policy
TABLE OF CONTENTS (continued)

Section 16	Minority Business Enterprise Participation Program	39
	A. Purpose and Scope	39
	B. Policy Statement	39
	C. Definitions	41
	D. Fulfilling MWBE Participation Requirements for Formal Bids and Requests for Proposals	43
	E. MWBE Citizens Advisory Committee	45
	F. Severability Clause	45
	G. Authority and Responsibilities of MWBE Office	46
	H. Certification Eligibility	46
	I. MWBE Certification Process	47
	J. MWBE Re-certification Process	48
	K. MWBE Decertification Process	49
	L. Good Faith Effort	50
	M. Substitution of MWBEs After Contract Award	51
	N. Non-Compliance with MWBE Policies	52
Section 17	Procurement for Community Development Block Grant Housing Program	53

Section 1 PURPOSE

This policy is adopted to promote the following purposes:

- A. To simplify, clarify, and modernize the procurement practices used by the Leon County Board of County Commissioners.
- B. To promote the continued development of professional and equitable procurement policies and practices.
- C. To promote public confidence in the purchasing procedures followed by Leon County.
- D. To ensure the fair and equitable treatment of all persons who deal with the procurement system of Leon County.
- E. To encourage the growth of small and minority businesses through the promotion of an atmosphere conducive to the development and maintenance of small and minority business participation in the County's procurement system.
- F. To maximize economy in Leon County procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of Leon County.
- G. To provide safeguards for the maintenance of a procurement system of quality and integrity in Leon County.

Section 2 APPLICATION OF POLICY

- A. Contracts: This policy shall apply to contracts/agreements solicited or entered into after the effective date of this policy or subsequent amendments or revisions, unless the parties agree to its application to a contract solicited or entered into prior to the effective date.
- B. Activities: This policy shall apply to the purchase/procurement of all materials, supplies, services, construction and equipment except as herein specifically exempted.
- C. Exemptions From the Purchasing Policy. The following exemptions do not preclude the County from utilizing competitive procurement practices where possible. The following types of purchasing activities shall be exempt from the purchasing policy except as noted:
 - 1) All heavy equipment repairs shall be exempted from the competitive sealed bid requirements. The Fleet Management Director or designee shall solicit and evaluate quotations and make a recommendation for award. The Purchasing Director shall review the quotations and the recommendation for award and award the bid. Should a purchase exceed \$20,000 the County Administrator shall agenda the item for ratification by the Board at a regularly scheduled Board meeting.

- 2) All purchases of services from a utility whose rates are determined and controlled by the Public Service Commission or other governmental authority, including but not limited to electricity, water, sewer, telephone, and cable television services.
- 3) All supplies, materials, equipment, or services purchased at a price established in any of the authorized forms of state contracts of the State of Florida Department of Management Services, Division of Purchasing; or under the terms and conditions of a cooperative purchasing agreement or term contract by other governmental units.
- 4) All supplies, and materials, equipment, construction, or services purchased from another unit of government not otherwise limited or prohibited by law.
- 5) Service/Maintenance Contracts: Continuing service and/or maintenance contracts that are initially awarded by the Board as a part of product acquisition/installation to a vendor who is the manufacturer, developer, or who is the authorized service agent thereof and for which funds are annually appropriated in the budget are exempt from further competitive requirements of this policy. Examples are software/hardware maintenance, building systems maintenance, security systems, etc.)
- 6) Real property, real estate brokerage, options of title or abstracts of title for real property, title insurance for real property, and other related costs of acquisition, rental, or sale of real property.
- 7) All purchases of used equipment having a value of ten thousand dollars (\$10,000) or less; however, each such purchase shall be supported by one equipment appraisal report from the vendor.
- 8) All purchases of used equipment having a value greater than \$10,000 and less than \$20,000; however, each such purchase shall be supported by two independent equipment appraisal reports.
- 9) Library Media and Materials. The purchase of library books, education and/or personnel texts, textbooks, printed instructional materials, reference books, periodicals, databases, indexes, pre-recorded library media materials, e.g. audio and video cassettes, film strips, films, sound recordings, computer software, etc, and printed library cards that are to be a part of the library collection are exempt.
- 10) Grants (Direct Payment) by the County and social services (e.g. burials, reimbursable emergency assistance payments to approved social service agencies, down payment assistance, temporary housing relocation expenses and indigent medical and tubercular care patient services).
- 11) Advertisements (except Delinquent Tax Notices).

- 12) Training Media and Services. When such materials or services are available only from the producer, publisher, owner of the copyright or patent, educational institution or training service provider which developed the training program, the purchase is exempt from competitive requirements. Approval thresholds in Section 5.0 shall apply.
- 13) Software. Upgrades, software modification services by the copyright holder, and related software enhancements to installed software purchased through competitive means are exempt. The purchase of new software packages or systems shall follow the thresholds and procedures of the policy to ensure competitive selection.
- 13) Corporate and media sponsorship agreements up to the formal bid threshold in Section 5.0.
- 14) Licensed health professionals, e.g., Doctors, Nurses, Veterinarians who provide service directly to patients.
- 15) Training and educational courses, contracts between the County and governmental entities or nonprofit corporations, memberships, publications, meeting rooms, and hotels when any of the procurements listed above are below the formal bid threshold in Section 5.0.
- 16) Lectures by individuals.
- 17) Artistic services, works of art for public places, and art design and conservation services.
- 18) Continuing education events or programs.
- 19) Services of legal counsel authorized by the Office of the County Attorney, including, but not limited to, expert witnesses, conflict counsel and other services required by the Office of the County Attorney.
- 20) Travel arrangements and expenses. (Reference Travel Policy)

Section 3 DEFINITIONS

- A. The following terms defined in this section shall have the meanings set forth below whenever they appear in this policy:
 1. "Addendum" is a written document used to expand or more fully explain the terms of a bid instrument (Invitation to Bid or Request for Proposals). An addendum is not to be confused with a contract "amendment."

2. "Agreement" means all types of Leon County agreements, regardless of what they may be called, for the purchase or disposal of supplies, services, materials, equipment or construction.
3. "Blanket Purchase Order" means a purchase order issued to a vendor for an amount not to exceed the face value of the purchase order. A blanket purchase order is for the procurement of commodities or services no single item of which shall exceed the threshold for small purchases unless the appropriate method of procurement was used to generate the Blanket Purchase Order.
4. "Board" means the Board of County Commissioners of Leon County, Florida.
5. "Brand Name or Equivalent Specification" means a specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet the County requirements, and which provides for the submission of equivalent products.
6. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
7. "Change Order" means a written order amending the scope of, or correcting errors, omissions, or discrepancies in a contract or purchase order.
8. "Commodity" means a product that the County may contract for or purchase for the use and benefit of the County. A specific item, it is different from the rendering of time and effort by a provider.
9. "Competitive Sealed Bidding" (Invitation for Bid) means a written solicitation for sealed competitive bids used for the procurement of a commodity, group of commodities, or services valued more than the threshold for this category. The invitation for bids is used when the County is capable of specifically defining the scope of work for which a contractual service is required or when the County is capable of establishing precise specifications defining the actual commodity or group of commodities required.
10. "Confirming Order" means a purchase order restating the same terms originally placed orally or in writing other than a purchase order.
11. "Construction" means the process of building, attaining, repairing, improving, or demolishing any public structure or building, or other public improvement of any kind to any public real property. It does not include routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
12. "Contract" means all types of Leon County agreements, regardless of what they may be called, for the purchase or disposal of supplies, services, materials, equipment or construction and which name the terms and obligations of the business transaction.

13. "Contract amendment or modification" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
14. "Contractor" means any person having a contract with Leon County (not to include employment contracts).
15. "Contractual Services" means the rendering by a contractor of its time and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors, and such services may include, but are not limited to, evaluations; consultations; maintenance; accounting; security; management systems; management consulting; educational training programs; research and development studies or reports on the findings of consultants engaged thereunder; and professional, technical, and social services.
16. "Contractual Services Contract" is a contract for a contractor's time and effort rather than the furnishing of specific commodities. Satisfactory completion of the service and/or a specified period of time or date completes such contract.
17. "Cooperative Purchasing" is procurement conducted by, or on behalf of, more than one public procurement unit.
18. "Cost Analysis" is the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.
19. "Data" means recorded information, regardless of form or characteristic.
20. "Definite Quantity Contract" is a contract whereby the contractor(s) agrees to furnish a specific quantity of an item or items at a specified price and time to specified locations. Delivery by the vendor and acceptance of the specific quantity by the County completes such contract.
21. "Designee" means a duly authorized representative of a person holding a superior position.
22. "Emergency" means when there exists a threat to public health, welfare, or safety; natural or unnatural, unexpected events; accidents; or loss to the County under emergency conditions which shall be considered to mean those situations where the operation of a department or division would be seriously impaired if immediate action were not taken.

23. "Emergency Purchase" is a purchase necessitated by a sudden unexpected turn of events (e.g., acts of God, riots, fires, floods, accidents or any circumstances or cause beyond the control of the agency in the normal conduct of its business) where the delay incident to competitive bidding would be detrimental to the interests of the County.
24. "Employee" means an individual drawing a salary from Leon County, whether elected or non-elected. For the purposes of this policy, it also means that any non-compensated individual performing personal services for Leon County is to be governed by these rules.
25. "Established Catalog Price" is the price included in a catalog, price list, schedule, or other form that:
 - 1) is regularly maintained by a manufacturer or contractor;
 - 2) is either published or otherwise available for inspection by customers; and
 - 3) states prices at which sales are currently or were last made to a significant number of any category of buyers or those buyers constituting the general buying public for the supplies or services involved.
26. "Field Purchase Order" means the procurement of commodities or services through the issuance of a purchase order by a department or division head under procedures established by the Purchasing Division and with a value within the thresholds set for this category. Field Purchase orders do not require quotes, bids, or public notice prior to issuance.
27. "Field Quotes" is the procurement procedure used by the operating department or divisions to purchase commodities or contractual services with a value within the threshold amounts set for this category and are conducted by the department or division.
28. "f.o.b. or FOB (free on board)" is a term used in conjunction with an identified physical location to determine the responsibility and basis for payment of freight charges, and the point at which title for the shipment passes from seller to buyer. Commonly used deliveries are:
 - 1) FOB Destination. A shipment to be delivered to a destination designated by the buyer and the point at which buyer accepts title.
 - 2) FOB Shipping Point (Origin). A shipment is to be delivered to the buyer with passage of title, on board the indicated conveyance or carrier at the contractor's designated facility.
29. "Gratuity" is a payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, inuring to the benefit of an employee, unless consideration of substantially equal or greater value is given by the employee.

30. "Informal Sealed Bid is a written solicitation method used by the County for securing prices and selecting a provider of commodities or services with a value within the threshold for this category.
31. Invitation for Bid (Competitive Sealed Bidding) means a written solicitation for sealed competitive bids used for the procurement of a commodity, group of commodities, or services valued more than the threshold for this category. The invitation for bids is used when the County is capable of specifically defining the scope of work for which a contractual service is required or when the County is capable of establishing precise specifications defining the actual commodity or group of commodities required.
32. "Invitation to Negotiate" means a written solicitation that calls for responses to select one or more persons or business entities with which to commence negotiations for the procurement of commodities or contractual services.
33. "Joint Venture" means:
 - a) a combination of contractors performing a specific job in which business enterprises participate and share a percentage of the net profit or loss; or
 - b) a joint business association of a minority individual(s)/firm(s) as defined herein, and a non-minority individual(s)/firm(s) to carry out a single business enterprise for which purpose the individuals/firms combine their property, money, efforts, skills and/or knowledge.
34. "Manufacturer" means a person or firm engaged in the process of making, fabricating, constructing, forming or assembling a product(s) from raw, unfinished, semi-finished, finished, or recycled materials through a direct contract/agreement on behalf of the general contractor.
35. "Option to Renew" means a contract clause that allows a party to reinstate the contract for an additional term.
36. "Person" means any business, individual, committee, club, other organization, or group of individuals.
37. "Pre-Bid Conference" (or Pre-Proposal Conference) means a meeting held with prospective bidders prior to solicitation of or the date for receipt of bids or proposals, to recognize state of the art limits, technical aspects, specifications, and standards relative to the subject, and to elicit expertise and bidders' interest in submitting a bid or pursuing the task.
38. "Professional Services" means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered land surveying, as defined by the State of Florida, or those performed by any architect, professional engineer, landscape architect, or registered land surveyor in connection with his professional employment or practice.

- 39. "Purchase Order" means that document used by Leon County to request that a contract be entered into for a specified need, and may include, but not be limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, payment terms, and other specifications.
- 40. "Purchasing" means buying, procuring, renting, leasing, or otherwise acquiring any materials, supplies, services, construction, or equipment. It also includes all functions that pertain to the obtaining of any material, supplies, services, construction, and equipment, including description of specifications and requirements, selection and solicitation of resources, preparation and award of contract.
- 41. "Purchasing Director" means the Leon County employee duly authorized to enter into and administer contracts and make written determinations with respect thereto under the terms of the purchasing policies of the Board of County Commissioners.
- 42. "Purchasing Quotes" is the procedure used to purchase commodities or contractual services wherein the Purchasing Director or Purchasing Agents obtain either written or oral quotations from two or more vendors for purchases within the threshold amounts set for this category.
- 43. "Recycled Content" means materials that have been recycled and are contained in the products or materials to be procured, including, but not limited to, paper, plastic, aluminum, glass, and composted materials. The term does not include internally generated scrap that is commonly used in industrial or manufacturing processes or waste or scrap purchased from another manufacturer who manufactures the same or a closely related product.
- 44. "Regulation" means a statement by the Board of County Commissioners having general or particular applicability and future effect, designed to implement, interpret, or prescribe law, policy, or practice.
- 45. "Request for Proposals" (RFP) means a written solicitation for sealed proposals with the title, date and hour of public opening designated. The request for proposals may be used when the County is unable to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required, and when the County is requesting that a qualified offeror propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document.
- 46. "Request for a Quote" means a solicitation that calls for pricing information for purposes of competitively selecting and procuring commodities and contractual services from qualified or registered vendors.
- 47. "Responsible bidder or offeror" means a person who has the capability, in all respects, to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

- 48. "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the Invitation to Bid or the Request for Proposals.
- 49. "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than those which are not defined as supplies and which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.
- 50. "Small Purchases" means the procurement of commodities or services with a value within the thresholds set for this category without the requirement of quotes, bids, or public notice under procedures established by the Purchasing Division.
- 49. "Sole (Single) Source Purchases" means the purchase of a commodity, service, equipment, or construction item(s) from one available practical source of supply. A Sole (single) Source may be declared such by the Board of County Commissioners for reasons acceptable to it.
- 50. "Specification" means any description of the physical or functional characteristics of the nature of a material, supply, service, construction, or equipment item. It may include a description of any requirement for inspection, testing, recycled or degradable materials content, or preparing a material, supply, service, construction, or equipment item for delivery.
- 51. "Supplier" means a person or firm who engages in the selling of materials and supplies to contractors, subcontractors, and/or manufacturers for the purpose of constructing, repairing, altering, remodeling, adding to or subtracting from or improving any building, structure or property through a direct contract/agreement on behalf of the general contractor.
- 52. "Tangible Personal Property" is defined as property which has an original acquisition cost of \$750 or more; is not consumed in use and has a useful life of one year or more after initial acquisition; is not fixed in place and not an integral part of a structure or facility; and is not an integral part or component of another piece of equipment.
- 53. "Term Contract" means indefinite quantity contract whereby a contractor(s) agrees to furnish an item or items during a prescribed period of time (such as 3, 6, 9, 12 months or a specific date). The specified period of time or date completes such contract.
- 54. "Tie (Identical) Bid" is when two or more bids are equal with respect to price and it appears that the quality and service offered by the vendors are otherwise comparable.

Section 4 AUTHORITY OF PURCHASING DIRECTOR

- A. The Purchasing Director shall serve as the central purchasing officer of Leon County.

- B. The Purchasing Director shall develop and administer operational procedures governing the internal functions of the Division of Purchasing.
- C. Except as otherwise specifically provided in this policy, the Purchasing Director, or his/her designee, shall, in accordance with regulations promulgated by the Board of County Commissioners:
 - 1) Purchase or supervise the purchase of all supplies, services, materials, equipment, and construction services defined within the scope of this policy.
 - 2) Operate a central warehouse for the purchasing, in bulk, of items which may be more economically bought and distributed than when purchased on an individual basis; and to provide facilities for storage of critically needed supplies.
- D. Upon the prior approval of the Leon County Director of Management Services, the Purchasing Director may delegate authority to designee(s) as allowed by law or rule.
- E. The Purchasing Director shall assist the Minority Business Enterprise Coordinator, implement, monitor, and enforce the County's Minority Business Enterprise program policy.

Section 5 PURCHASING CATEGORIES; THRESHOLD AMOUNTS

- A. Petty Cash/Reimbursement (Section 5.01) Not to exceed \$100
- B. Field Purchase Order (Section 5.02) \$1 to \$500
- C. Small Purchase Procedures (Section 5.03) \$1 to \$500
Warehouse Operations Section 5.031) \$1 to \$2,000
- D. Blanket Purchase Orders (Section 5.04)
 - non-contractual basis \$201 to \$2,000
 - contractual basis **nt**
 - to exceed \$50,000
- E. Field Quotes (Section 5.05) \$501 to \$5,000
- F. Purchasing Quotes (Section 5.06) \$5,001 to \$10,000
- G. Informal Bid Process (Section 5.07) \$10,001 to \$20,000
- H. Competitive Sealed Bids (Section 5.08) \$20,001 and above
- I. Competitive Sealed Proposals (Section 5.09)
 - Approved by County Administrator \$10,001 to \$20,000
 - Approved by the Board \$20,001 and above

Section 5.01 PETTY CASH/REIMBURSEMENT

- A. Petty cash funds shall be established and administered under the financial policies of the Board.
- B. Purchases from any petty cash fund or the reimbursement for a purchase shall be governed by the following requirements:
 - 1) No purchase of any single item from any petty cash fund or for reimbursement shall exceed the authorized dollar limit for petty cash/reimbursements in Section 5.
 - 2) Reimbursement for employee travel expenses from a petty cash fund shall not be allowed, except for local parking or toll costs.
 - 3) Funds contained within a petty cash fund shall not be expended for the payment of salaries.
 - 4) Expenditures from a petty cash fund or personal funds shall be reimbursed, provided:
 - a) They are supported by itemized vouchers, invoices, or receipts signed by the division or department head or designee.
 - b) They qualify as a proper public purpose.
 - c) They are expenses included within the approved annual budget of the division or department.

Section 5.02 FIELD PURCHASE ORDERS

- A. Field purchase orders shall be used for purchase of small, sundry items which cost not more than the threshold authorized for field purchase orders in Section 5. Field purchase orders shall be used for a single or aggregate purchase, but only for a single transaction. Employees are encouraged to seek out and utilize certified minority and women-owned business enterprises in these purchases.
- B. Field purchase orders shall not be combined to purchase any item which costs more than the approved threshold limit and shall not be used in the manner of or in lieu of a blanket purchase order.
- C. Field purchase orders shall be issued and authorized only by department and division heads.

Section 5.03 SMALL PURCHASES

The purchase of commodities, equipment and services which cost less than the threshold authorized in Section 5 does not require solicitation of quotes or bids. Small purchases shall be authorized by Department or Division heads or their designees. Employees are encouraged to seek out and utilize certified minority and women-owned business enterprises in these purchases.

Section 5.031 WAREHOUSE OPERATIONS

The purchase of commodities, materials, and equipment for warehouse inventory which cost less than the threshold authorized in Section 5 does not require solicitation of quotes or bids. Use of economic indices, review of costs, market trends, and/or use of periodic quotations shall be used by staff to assure cost effective purchases.

Section 5.04 BLANKET PURCHASE ORDERS

Blanket Purchase Orders of either type listed below shall not be used to purchase any tangible personal property item. Tangible personal property items shall be listed as individual line items on a purchase order.

- A. Non-contractual Basis. All purchases made with a non-contractual blanket purchase order shall follow the thresholds and requirements for competitive selection . No purchase order shall be issued for an amount greater than the limit established for a non-contractual blanket purchase order in Section 5 of this policy for the purchase of goods or services not under a contractual arrangement authorized under this purchasing policy or approved by the Board.
- B. Contractual Basis. No purchase order shall be issued for an amount greater than the limit established for a contractual blanket purchase order in Section 5 of this policy for the purchase of goods or services unless approved by the Board.

Section 5.05 FIELD QUOTES

The purchase of goods and services which cost within the range authorized for field quotes in Section 5 shall require competitive quotations from three or more vendors. The quotations may be obtained by the Department/Divisions. Employees are encouraged to seek out and secure at least one of the three quotes from certified minority and women-owned business enterprises. The Purchasing Director shall review the quotations and make the award or require additional quotations prior to award.

Section 5.06 PURCHASING QUOTES

The purchase of goods and services which cost within the range authorized for purchasing quotes in Section 5 shall require competitive quotations from three or more vendors. The quotations may be obtained by the operating department/division or the Purchasing Division and shall be reviewed and awarded by the Purchasing Director. Quotes must be on company letterhead, quote forms, or in a similar format with a date and signature of an authorized representative of the vendor. Employees are encouraged to seek out and secure at least one of the three quotes from certified minority and women-owned business enterprises.

Section 5.07 INFORMAL BIDS

For purchases within the cost range authorized for informal bids in Section 5, the Purchasing Director shall secure, whenever possible, a minimum of three written quotations which shall be the result of written specifications transmitted by mail, by electronic format, or by facsimile. When such quotations are received by facsimile, the purchasing agent will immediately seal and label the quotations until the time set for opening bids. In those instances where the securing of three quotations is not practicable, the Purchasing Director shall provide written justification of such. The Purchasing Division shall seek out and encourage participation in the bid from certified minority and women-owned business enterprises. The quotations shall be reviewed and a written recommendation of award shall be prepared by the Purchasing Director for approval by the County Administrator.

Section 5.08 COMPETITIVE SEALED BIDDING

- A. Conditions For Use. All contracts for purchases of a single item or aggregate in excess of the established base amount for competitive sealed bidding in Section 5 shall be awarded on the basis of sealed competitive bidding, except as provided in Section 5.09, Competitive Sealed Proposals.
- B. Invitation to Bid. An invitation to bid shall be issued and shall include specifications, all contractual terms and conditions, and the place, date, and time for opening or submittal. No later than five working days prior to the date for receipt of bids, a vendor shall make a written request to the County for interpretations or corrections of any ambiguity, inconsistency or error which the vendor may discover. All interpretations or corrections shall be issued as addenda. The County shall not be responsible for oral clarifications or representations.

No negotiations, decisions or actions shall be initiated or executed by the proposer as a result of any discussions with any County employee prior to the opening of proposals. Only those communications which are in writing from the County may be considered as a duly authorized expression on the behalf of the County. Also, only communications from firms or individuals which are in writing and signed will be recognized by the County as duly authorized expressions on behalf of proposers.

- 1) Alternate(s). Alternate bids will not be considered unless authorized by and defined in the invitation to bid or addenda thereto.
- 2) Approved Equivalents. The County reserves the right to determine acceptance of item(s) as an approved equivalent. Bids which do not comply with stated requirements for equivalents in the bid conditions are subject to rejection. The procedure for acceptance of equivalents shall be included in the invitation to bid or addenda thereto.

C. Public Notice.

- 1) The solicitation of competitive bids or proposals for any county construction project that is projected to cost more than \$200,000 shall be publicly advertised at least once in a newspaper of general circulation in the County at least 21 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference. The solicitation of competitive bids or proposals for any county construction project that is projected to cost more than \$500,000 shall be publicly advertised at least once in a newspaper of general circulation in the county at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled prebid conference. Bids or proposals shall be received and opened at the location, date, and time established in the bid or proposal advertisement. In cases of emergency, the procedures required in this section may be altered by the County in any manner that is reasonable under the emergency circumstances.
- 2) Changes to Public Notice. If the location, date, or time of the bid opening changes, written notice of the change shall be given, as soon as practicable after the change is made, to all persons who are registered to receive any addenda to the plans and specifications.
- 3) Each invitation to bid, request for proposals, request for qualifications, invitation to negotiate, or other procurement solicitation which is anticipated to include travel expenses by authorized persons as defined in the Leon County Travel Policy shall include the following notice:

Consultant travel which is not covered within the scope of the consultant's contract and which is billed separately to the county on a cost reimbursement basis must receive prior approval and will be reimbursed in accordance with the Leon County Travel Policy. Travel expenses shall be limited to those expenses necessarily incurred in the performance of a public purpose authorized by law to be performed by the Leon County Board of County Commissioners and must be within limitations described herein and in Ch. 112.06, Florida Statutes. Consultants and contractors, traveling on a cost reimbursement basis, must have their travel authorized by the department head from whose budget the travel expenses will be paid and the County Administrator.

D. Bid Opening. Bids shall be opened publicly. At least one representative from the Division of Purchasing shall open the bids in the presence of one or more witnesses at the time and place designated in the Invitation to Bid. The amount of each bid, and such other relevant information as may be deemed appropriate by the Purchasing Director, together with the name of each bidder, and all witnesses shall be recorded. The record (Bid Report) and each bid shall be open to public inspection.

E. Bid Acceptance and Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Policy. Bids shall be evaluated based on the requirements set forth in the Invitation to Bid, which may include, but not be limited to criteria to determine acceptability such as: inspection, testing, quality, recycled or degradable materials content, workmanship, delivery, and suitability for a particular purpose and/or factors to

determine a bidder's level of responsibility such as references, work history, bonding capacity, licensure, certifications, etc.. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measured, such as discounts, transportation costs, and total or life cycle costs. No criteria may be used in bid evaluation that are not set forth in the Invitation to Bid, in regulations, or in this policy.

- F. Bid Agenda Item. The Bid Report shall be presented to the appropriate department or division head for review and recommendation. The department or division head shall prepare the recommendation as an agenda item for review by the Purchasing Director prior to submission to the County Administrator for review and approval. Upon approval, the County Administrator shall place the item on the agenda of the Board of County Commissioners.
- G. Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted where appropriate under the sole discretion of the County. Mistakes discovered before bid opening may be modified or withdrawn upon written notice received in the office designated in the Invitation for Bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the County or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
 - 1) the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - 2) the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the Purchasing Director and concurred with by the County Administrator.
- H. Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids or request for proposals may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
- I. Award. The contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid. The County reserves the right to waive any informality in bids and to make an award in whole or in part when either or both conditions are in the best interest of Leon County.

- 1) Notice of Intended Award. The contract shall be awarded by purchase order or other written notice. Every procurement of contractual services shall be evidenced by a written agreement. Notice of the intended award, including rejection of some or all of bids received, may be given by posting the bid tabulations where the bids were opened, by telephone, by first class mail, or by certified United States mail, return receipt requested, whichever is specified in the bid solicitation. A vendor may request, in their bid submittal, a copy of the tabulation sheet to be mailed in a vendor provided, stamped self-addressed envelope for their record.
 - 2) Notice of Right to Protest. All notices of decision or intended decisions shall contain the statement: "Failure to file a protest within the time prescribed in Section 5.13 of the Purchasing Policy of the Leon County Board of County Commissioners, shall constitute a waiver of proceedings under that section of this Policy.
- J. Cancellation of Invitations for Bids. An invitation for bids or other solicitation may be canceled, or any or all bids may be rejected in whole or in part when it is in the best interests of the County, as determined by the Board. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items.
- K. Disqualification of Vendors. For any specific bid, vendors may be disqualified by the Purchasing Director for the following reasons:
- 1) Failure to respond to bid invitation three consecutive times.
 - 2) Failure to update the information on file including address, project or service, or business description.
 - 3) Failure to perform according to contract provisions.
 - 4) Conviction in a court of law of any criminal offense in connection with the conduct of business.
 - 5) Clear and convincing evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals, or the awarding of contracts.
 - 6) Clear and convincing evidence that the vendor has attempted to give a Board employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Board's purchasing activity.
 - 7) Failure to execute a Public Entity Crimes Statement as required by Florida Statutes Chapter 287.133(3)(a).
 - 8) Other reasons deemed appropriate by the Board of County Commissioners.

- L. No bids received. If no competitive bids or proposals for commodity or services purchases are received, the Purchasing Director may negotiate on the best terms and conditions. Award will be made by the Board.
- M. Local preference. In purchasing goods or services where pricing is the major consideration, the authorized purchasing authority of Leon County may give a preference to local businesses in an amount of five percent (5%) of the bid price for purchases under \$250,000, and two percent (2%) of the bid price for purchases \$250,000 and above. The maximum cost differential shall not exceed \$20,000. Total bid price shall include the base bid and all alternatives or options to the base bids which are part of the bid and being recommended for award by the appropriate authority. (Reference Article IX, Section 2-400, Chapter 2 of the Code of Laws of Leon County, Florida)

Section 5.09 COMPETITIVE SEALED PROPOSALS

Section 5.091 PROFESSIONAL ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL, AND LAND SURVEYING SERVICES

- A. Public Announcement. It is the policy of the County to publicly announce all requirements for professional architectural, engineering, landscape architectural, and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of such services, the Purchasing Director may require firms to submit a statement of qualifications, performance data and other related information for the performance of professional services.
 - 1) Scope of Project Requirements. Prior to submission of the request for proposals for professional services as an agenda item for approval by the Board, the using agency or agencies for which the professional services are requested shall submit to the Purchasing Director written project requirements indicating the nature and scope of the professional services needed by the using agency or agencies, including but not limited to the following:
 - a) the general purpose of the service or study;
 - b) the objectives of the study or service;
 - c) estimated period of time needed for the service or the study;
 - d) the estimated cost of the service or study (where permissible by law);
 - e) whether the proposed study or service would or would not duplicate any prior or existing study or service;
 - f) list of current contracts or prior services or studies which are related to the proposed study or service; and
 - g) the desired qualifications, listed in order of importance, of the person or firm applicable to the scope and nature of the services requested.

- 2) **Review of Project Requirements.** The Purchasing Director or his/her designee shall review the scope of project requirements and, if revisions of project requirements are warranted to best meet the needs of the County, copies of the revised project requirements shall be submitted to the user department for consideration prior to public distribution of the project requirements.
- 3) **Distribution of Project Requirements.** The Purchasing Director shall distribute the written project requirements to all persons on the mailing list who have indicated an interest in being considered for the performance of such professional services and to any other additional persons as the Purchasing Director or using agency deems desirable. The project requirements shall be accompanied by an invitation to such persons to submit an indication of interest in performing the required services, and by notification of the date and time when such indications of interest are due. Public notice shall be as provided in Section 5.08 (C).
- 4) **Resolicitation.** If the County receives indications of interest from less than three persons, the Purchasing Director may resolicit indications of interest from all persons previously solicited and from such additional persons as may seem advisable. However, if after reasonable efforts have determined that there exists little or no likelihood of additional responses, the Purchasing Director may proceed to consider those persons responding to the solicitation or resolicitation.
- 5) **Modification Prohibition.** After the publicized submission time and date, indications of interest shall not be modified or allowed to be modified in any manner except for correction of clerical errors or other similar minor irregularities as may be allowed by the Selection Committee (defined in Section 5.091B) prior to making its selection of those best qualified to be formally interviewed.
- 6) **Reuse of Existing Plans.** There shall be no public notice requirements or utilization of the selection process as provided in this section for projects in which the County is able to reuse existing plans from a prior project. However, public notice of any plans which are intended to be reused at some future time shall contain a statement which provides that the plans are subject to reuse.
- 7) **Local preference.** When the County uses a request for proposals to procure goods or services, the request is developed with evaluation criteria by which a vendor is selected. As part of the evaluation criteria, a local preference of not more than five percent (5%) of the total score shall be assigned for a local preference for local businesses. (Reference Article IX, Section 2-400, Chapter 2 of the Code of Laws of Leon County, Florida)
- 8) **Exemptions.** This section shall not apply to a professional service contract for a project where the basic construction cost is estimated by the agency to be less than the threshold amount provided in s. 287.055, Florida Statutes, or for a planning or study activity when the fee for professional services is estimated by the agency to be less than the threshold amount provided in s. 287.055, Florida Statutes, or in cases of valid public emergency so certified by the County Administrator. This section shall not apply to any requirement for professional services if a continuing contract is in effect and a determination is made to utilize the continuing contract to obtain such services.

- B. Selection Committee Membership and Evaluation. Depending on the expected complexity and expense of the professional services to be contracted, the County Administrator or his/her

designee shall determine whether a three member or five member selection committee will best serve the needs of the County.

- 1) Three Member Committee Composition. Membership of a three-member selection committee shall be appointed by the County Administrator or his/her designee.
- 2) Five Member Committee Composition. Membership of a five member selection committee shall be appointed by the County Administrator or his/her designee.
- 3) Public Meetings. In accordance with Florida Statute 286.011, all Selection Committee meetings subsequent to the opening of the solicitation are to be public meetings. The Chairperson shall be responsible to provide the Purchasing Division with all meeting information (date, time, location, and reason for meeting) no less than 96 hours in advance of any scheduled meeting, excluding holidays and weekends. The Purchasing Division will provide reasonable notice of all meetings, no less than seventy-two (72) hours notice, excluding holidays and weekends, by posting a Notice of Evaluation Committee Meeting on the public notice bulletin board in the Division offices and by giving notice of the meeting to the County Public Information Office and all respondents to the solicitation by facsimile or telephone. The Purchasing Director shall develop and implement Selection Committee procedures to ensure compliance with public meeting requirements.
- 4) Selection Committee Evaluation. Only written responses of statements of qualifications, performance data, and other data received in the purchasing office by the publicized submission time and date shall be evaluated. Only those respondents who are determined to be best qualified based upon the evaluation of written responses and selected for formal interview may submit additional data. From among those persons evidencing, by timely submission of written responses, an interest in performing the services the Selection Committee shall:
 - a) prepare an alphabetical list of those persons determined by the Selection Committee to be qualified, interested and available; and
 - b) designate no less than three persons on the alphabetical list considered by the Selection Committee to be best qualified to perform the work required.
- 5) Short listing. The best qualified respondents shall be based upon the Selection Committee's ability to differentiate qualifications applicable to the scope and nature of the services to be performed. The Selection Committee shall determine qualifications, interest and availability by reviewing the written responses that express an interest in performing the services, and by conducting formal interviews of no less than three selected respondents that are determined to be best qualified based upon the evaluation of written responses. The determinations may be based upon, but not limited to, the following considerations:

- a) competence, including technical education and training, experience in the kind of project to be undertaken, availability of adequate personnel, equipment and facilities, the extent of repeat business of the persons, and where applicable, the relationship of construction cost estimates by the person to actual costs on previous projects;
 - b) current work load;
 - c) financial responsibility;
 - d) ability to observe and advise whether plans and specifications are being complied with, where applicable;
 - e) record of professional accomplishments;
 - f) proximity to the project involved, if applicable;
 - g) record of performance;
 - h) ability to design an approach and work plan to meet the project requirements, where applicable; and
 - 6) Interviews and Board Approval. After conducting the formal interviews, the Selection Committee shall list those respondents interviewed in order of preference based upon the considerations listed in subsection (4) above. The respondents so listed shall be considered to be the most qualified and shall be listed in order of preference starting at the top of the list. The list of best qualified persons shall be forwarded to the Board for approval prior to beginning contract negotiations. Negotiation sequence shall be based on the order of preference.
- C. Negotiation Staff. Contract negotiations shall be conducted by the Purchasing Director or designee(s) or by a Negotiation Committee.
- 1) Negotiation Committee Membership. Membership of the three member Negotiation Committee shall consist of:
 - a) the Purchasing Director, or the designee of the Purchasing Director who shall chair the committee,
 - b) the head of the primary using department or agency, or his/her designee,
 - c) the County Attorney or designee.
 - 2) Negotiation. The Negotiator(s) shall negotiate a contract with the firm considered to be the most qualified to provide the services at compensation and upon terms which the Negotiator(s) determines to be fair and reasonable to the County. In making this decision, the Negotiator(s) shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the Negotiator(s) be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be formally terminated.

The Negotiator(s) shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Negotiator(s) shall formally terminate negotiations, and shall then undertake negotiations with the third most qualified firm. Should the Negotiator(s) be unable to negotiate a satisfactory contract with any of the selected firms, the Selection Committee shall select additional firms in order of their competence and qualifications, and the Negotiator(s) shall continue negotiations in accordance with this Section until an agreement is reached or until a determination has been made not to contract for such services.

- 3) Continuing Contracts. Nothing in this section (5.091) shall be construed to prohibit continuing contracts for professional services between a firm and the County.

Section 5.092 OTHER COMPETITIVE SEALED PROPOSALS

- A. Conditions for Use. When the Director of Purchasing determines that the use of competitive sealed bidding is either not practical or not advantageous to the County, a contract may be entered into by the use of competitive sealed proposals.
- B. Consultant's Competitive Negotiation Act. Professional services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered land surveying, as defined under the Consultant's Competitive Negotiation Act (Section 287.055, Florida Statutes), shall be secured under the provisions of Section 5.091.
- C. Board Approval. Proposals anticipated to exceed the threshold established in Section 5 for Competitive Sealed Proposals shall be approved by the Board of County Commissioners prior to solicitation.
- D. Public Notice. Adequate public notice of the Request for Proposals shall be given in the same manner as provided in subsection 5.08C of this policy for competitive sealed bidding.
- E. Evaluation Factors. The Request for Proposals shall state the relative importance of criteria outlined in the scope of services, fee proposal, and other evaluation criteria as suggested in section 5.091B(4)).
- F. Proposal Cancellation or Postponement. The Director of Purchasing may, prior to a proposal opening, elect to cancel or postpone the date and/or time for proposal opening or submission.
- G. Revisions and Discussions with Responsible Offerors. Discussions may be conducted with responsible offerors who submit proposals determined to be qualified of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining the best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

- H. Award. Award shall be made to the lowest responsible offeror whose proposal is determined in writing to be the most advantageous to Leon County, taking into consideration the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation criteria that is not included in the Request for Proposal.
- I. Local preference. When the County uses a request for proposals to procure goods or services, the request is developed with evaluation criteria by which a vendor is selected. As part of the evaluation criteria, a local preference of not more than five percent (5%) of the total score shall be assigned for a local preference for local businesses. (Reference Article IX, Section 2-400, Chapter 2 of the Code of Laws of Leon County, Florida)

Section 5.10 SOLE SOURCE PURCHASES

- A. Sole Source Certification. A contract may be awarded, except as otherwise provided for under state law, for a supply, service, material, equipment or construction item(s) without competition when the Purchasing Director, with the concurrence of the Leon County Director of Management Services, certifies in writing, after conducting a good faith review of available sources, that there is only one available source for the required material, supply, service, equipment, or construction item(s). Such awards will be made within the authorized procurement limits identified in Section 5.0. When a purchase exceeds the threshold amount for Board approval, the item will be placed on the agenda for Board approval and certification that the vendor has been determined to be a sole source.
- B. Additional Purchases from Certified Sole Source. The Purchasing Director shall be authorized, after initial sole source certification, to make additional purchases from a sole source vendor for not less than one year or until such time as contrary evidence is presented regarding sole source eligibility, whichever period is less.

Section 5.11 EMERGENCY PURCHASES

- A. Authorization During Normal Business Hours. In the case of emergencies which require the immediate purchase of goods, equipment or services, the County Administrator, Purchasing Director, Group Director, or his designee shall be empowered to secure such goods or services without competitive bidding. In this event, all measures reasonably possible under the circumstances shall be taken to assure the maximum cost benefit to the County of the goods or services procured.
- B. Authorization Outside of Normal Business Hours. A department or division head, during non-business hours, is authorized to make purchases without competitive bids, when an emergency arises.
- C. Documentation and Approval. Documentation for emergency purchases pertaining to the above shall be submitted to the Purchasing Office on the standard emergency requisition form with a detailed explanation, and support material attached, if applicable, within ten (10) work days after the event occurred. Emergency purchases that exceed the competitive sealed bid threshold shall be ratified by the Board. Emergency purchases within the informal bid thresholds shall be approved by the County Administrator after-the-fact.

- D. Mutual Aid Agreements. The County may enter into and utilize Mutual Aid Agreements as provided in Chapter 252, Florida Statutes in the event of emergency situations. The Purchasing Director shall be authorized to invoke the terms of the Mutual Aid Agreement.

Section 5.12 COOPERATIVE PURCHASING

- A. State Contracts. The Purchasing Director is authorized to purchase goods or services for any dollar amount from authorized vendors listed on the respective state contracts (state term continuing supply contracts, SNAPS agreements [State Negotiated Agreement Price Schedules], agreements resulting from Invitations to Negotiate [ITN], or other such contracts authorized by statute for use by local governments) of the Florida Department of Management Services. Such purchases shall be made without competitive bids provided that funding has been appropriated and approved by the Board of County Commissioners in Department/Division accounts.
- B. Federal Supply Service. The Purchasing Director is authorized to purchase goods or services for any dollar amount from authorized vendors listed on the respective Federal Supply Schedules issued by the Federal General Services Administration. Such purchases shall be made without competitive bids provided that funding has been appropriated and approved by the Board of County Commissioners in Department/Division accounts.
- C. Other Public Procurement Units. The Purchasing Director shall have the authority to join with other units of government in cooperative purchasing ventures when the best interest of the County would be served thereby, and the same is in accordance with the County and State law. The Purchasing Director shall appropriately document such cooperative purchasing arrangements. All Cooperative Purchasing conducted under this section shall be through contracts awarded through full and open competition, including use of source selection methods equivalent to those required by this policy. Each selection method shall clearly state the intention to include participation by other units of government as a requirement for use in cooperative purchasing.

Section 5.13 PROTESTED SOLICITATIONS AND AWARDS

- A. Right to Protest. Any person, hereinafter referred to as protestor, who submits a timely response to an invitation to bid or a request for proposals and who is aggrieved with the decision or intended decision of the County shall have the right to protest.
- B. Filing a Protest. Any protestor shall file with the Purchasing Division a notice of protest in writing within 72 hours after the posting of the bid tabulation or after posting of the decision or notice of intended decision of the County. The formal written protest shall be filed within 10 calendar days after the date protestor filed the notice of protest. Failure to timely file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this Section.

A written protest is filed with the County when it is delivered to and received by the Purchasing Division.

- 1) The notice of protest shall contain at a minimum: the name of the protestor; the protestor's address and phone number; the name of the protestor's representative to whom notices may be sent; the name and bid number of the solicitation; and, a brief factual summary of the basis of the protest.
 - 2) The formal written protest shall: identify the protestor and the solicitation involved; include a plain, clear statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the protestor deems applicable to such grounds; and, specifically request the relief to which the protestor deems himself entitled by application of such authorities to such grounds. The protestor shall mail a copy of the notice of protest and the formal written protest to all parties to the procurement activity.
 - 3) Any person who files a formal written shall post with the Purchasing Division at the time of filing the formal written protest a bond payable to the Board of County Commissioners, Leon County, in an amount equal to 1 percent of the County's estimate of the total volume of the contract or \$5000, whichever is greater. If after completion of the bid protest hearing process and any appellate court proceedings, the County prevails, it shall recover all court costs and charges which shall be included in the final order of judgement, excluding attorney's fees. Upon payment of such court costs and charges by the person protesting the award, the bond shall be returned to him. If the protestor prevails, his protest bond shall be returned and he shall recover from the County all costs and charges which shall be included in the final order of judgement, excluding attorney's fees, lost profits and bid preparation costs.
- C. Settlement and Resolution. The Director of Purchasing shall have the authority, prior to commencement of an action in court concerning a protest, to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract.
- 1) The Purchasing Director shall, within 14 calendar days of the filing of the formal written protest, attempt to resolve the protest prior to any proceedings arising from the position.
 - 2) If the protest is not resolved by mutual agreement, the Purchasing Director shall within the time set forth in Section 5.13(c)(1) above issue a decision in writing on the merits of the protest. The decision shall:
 - a) State the reasons for the decision; and
 - b) Inform the protestor of its right to further administrative appeal.
 - 3) Notice of Decision. A copy of the decision by the Purchasing Director shall be mailed or otherwise furnished immediately to the protestor and any other party intervening.
- D. Appeal of Purchasing Director's Decision. The decision of the Purchasing Director may be appealed to the Procurement Appeals Board by the protestor by filing a formal written appeal with the Purchasing Director within 5 calendar days of receipt of the Purchasing Director's decision.

- E. Procurement Appeals Board. There is hereby established a Procurement Appeals Board to be composed of a chairperson and two other members. The chairperson and members of the Board shall be appointed by the County Administrator. The term of office of the chairperson and each member of the Procurement Appeals Board shall be three years. For the initial appointments the County Administrator shall appoint the chairperson for a term of three years, one member for a term of two years, and one member for a term of one year so that a term of office expires every year. Thereafter, their successors shall be appointed for terms of three years, or for the balance of any unexpired term, but members may continue to serve beyond their terms until their successors take office. Members may be reappointed for succeeding terms.
- 1) The Purchasing Division is authorized to provide for the Board such administrative support as the chairperson requests in the hearing of appeals.
 - 2) Acting by two or more of its members, the Procurement Appeals Board shall issue a decision in writing or take other appropriate action on each appeal submitted. A copy of any decision shall be provided to all parties and the Purchasing Director.
 - 3) Procurement Appeals Board Proceeding Procedures
 - a) The Procurement Appeals Board shall give reasonable notice to all substantially affected persons or businesses, including the protestor, and any intervenor. Petitions to intervene will be considered by the Chairman of the Procurement Appeals Board, and any decision concerning a Petition to Intervene shall be made by the Chairman and shall be deemed final.
 - b) At or prior to the protest proceeding, the protestor and/or intervenor, as the case may be, may submit any written or physical materials, objects, statements, affidavits, and arguments which he/she deems relevant to the issues raised.
 - c) In the proceeding, the protestor, and/or intervenor, as the case may be, or his representative or counsel, may also make an oral presentation of his evidence and arguments. Further, only reasonable direct and cross examination of witnesses shall be permitted, at the discretion of the Chairman of the Procurement Appeals Board. The members of the Procurement Appeals Board may make whatever inquiries they deem pertinent to a determination of the protest.
 - d) The judicial rules of evidence shall not strictly apply, however, witnesses shall be sworn and any testimony taken under oath, and the members of the Procurement Appeals Board shall base their decision on competent, substantial evidence. The proceeding shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.
 - e) Within seven (7) working days of the conclusion of the proceeding, the Procurement Appeals Board shall render a decision. The Procurement Appeals Board decision shall be reduced to writing and provided to the protestor and/or intervenor, as the case may be, and the County.
 - f) Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.

- 4) Intervenor. The participation of intervenors shall be governed by the terms of the order issued by the Chairperson of the Procurement Appeals Board in response to a petition to intervene. Intervention may only be permitted for any person, hereinafter referred to as intervenor, who has submitted a timely response to the subject invitation to bid or request for proposals and who has a substantial interest in the decision of the County.
 - 5) Time Limits. The time limits in which protests shall be filed as provided herein may be altered by specific provisions in the invitation for bids or request for proposals documents or upon the mutual written consent of the protestor and the County.
 - 6) Entitlement to Costs. In no case will the protestor or intervenor be entitled to any costs incurred with the solicitation, including bid preparation costs, lost profits and/or attorney's fees.
 - 7) After notice of an appeal to the Procurement Appeals Board has been filed with the Purchasing Director, the appellant may not discontinue such appeal without prejudice, except as authorized by the Procurement Appeals Board.
- F. Stay of Procurement During Protests. In the event of a timely protest under Section 5.13(A) herein, the Purchasing Director shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the County Administrator makes a written determination that the award of a contract without delay is necessary to protect the substantial interests of the County.

Section 5.14 CONTRACT CLAIMS

- A. Authority to Settle Contract Controversies. This Section applies to controversies between the County and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission, where the contractor and County agree to utilize the provision of this section.
- 1) The Purchasing Director is authorized to settle any controversy arising out of the performance of a County contract, prior to the commencement of an action in a court of competent jurisdiction up to \$10,000 in value.
 - a) If such a controversy is not resolved by mutual agreement, the Purchasing Director shall promptly issue a decision in writing. A copy of the decision shall be mailed or otherwise be furnished to the contractor immediately. The decision shall:
 - (1) State the reason for the action taken; and,
 - (2) Inform the Contractor of its right to administrative review as provided in this section.

- b). If the Purchasing Director does not issue a written decision required in paragraph (a) of this subsection within thirty (30) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.
 - c) The decision of the Purchasing Director may be appealed to the Procurement Appeals Board by the protestor by filing a formal written appeal with the Purchasing Director within 5 calendar days of receipt of the Purchasing Director's decision.
- 2) The Procurement Appeals Board is authorized to review any appeal of a decision on a contract controversy by the Purchasing Director or to hear any contract controversy in excess of \$10,000.
 - 3) The Procurement Appeals Board shall promptly decide the contract or breach of contract controversy. The proceeding shall be de novo and shall follow the Proceeding Procedures contained in Section 5.13 (E)(3). Any prior determination by administrative officials shall not be final or conclusive.

Section 5.15 REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

- A. Prior to Bid Opening or Closing Date for Receipt of Proposals. If prior to the bid opening or the closing date for receipt of proposals, the Purchasing Director, after consultation with the County Attorney, determines that a solicitation is in violation of federal, state, or local law or ordinance, then the solicitation shall be canceled or revised to comply with applicable law.
- B. Prior to Award. If after bid opening or the closing date for receipt of proposals, but prior to the award of contract, the Purchasing Director, after consultation with the County Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law or ordinance, then the solicitation or proposed award shall be canceled.
- C. After Award. If, after award, the Purchasing Director, after consultation with the County Attorney, determines that a solicitation or award of a contract was in violation of applicable law or ordinance, then:
 - 1) if the person awarded the contract has not acted fraudulently or in bad faith:
 - a) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the County; or
 - b) the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to termination, but excluding attorney's fees; or
 - 2) if the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or voidable, if such action is in the best interests of the County.

Section 6 CONTRACT ADMINISTRATION

Section 6.1 CONTRACT PROVISIONS

- A. Standard Contract Clauses and Their Modification. The Purchasing Director, after consultation with the County Attorney, may establish standard contract clauses for use in County contracts. However, the Purchasing Director may, upon consultation with the County Attorney, vary any such standard contract clauses for any particular contract.
- B. Contract Clauses. All County contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Purchasing Director, after consultation with the County Attorney, may propose provisions appropriate for supply, service, or construction contracts, addressing among others the following subjects:
 - 1) the unilateral right of the County to order, in writing, changes in the work within the scope of the contract;
 - 2) the unilateral right of the County to order, in writing, temporary stopping of the work or delaying performance that does not alter the scope of the contract;
 - 3) variations occurring between estimated quantities or work in contract and actual quantities;
 - 4) defective pricing;
 - 5) time of performance and liquidated damages;
 - 6) specified excuses for delay or nonperformance;
 - 7) termination of the contract for default;
 - 8) termination of the contract in whole or in part for the convenience of the County;
 - 9) suspension of work on a construction project ordered by the County;
 - 10) site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:
 - a) when the contract is negotiated;
 - b) when the contractor provides the site or design;
 - c) when the parties have otherwise agreed with respect to the risk of differing site conditions.
 - 11) value engineering proposals

Section 6.2 PRICE ADJUSTMENTS

- A. Methods of Price Adjustment. Adjustments in price during the term of a contract shall be computed in one or more of the following ways upon approval by the Board:
- 1) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - 2) by unit prices specified in the contract or subsequently agreed upon;
 - 3) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon by the Board;
 - 4) in such other manner as the contracting parties may mutually agree; or
 - 5) in the absence of agreement by the parties, by a unilateral determination by the County of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the County, subject to the provisions of this section.
- B. Cost or Pricing Data Required. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of this Section.

Section 6.3 CHANGE ORDERS/CONTRACT AMENDMENTS

- A. Change Orders. For change orders, whether a capital improvement or a consultant services project, the following limits shall apply:
- 1) The County Administrator is granted authority to approve, within budgeted funds, change orders not to exceed fifty thousand dollars (\$50,000).
 - 2) Change orders which exceed fifty thousand (\$50,000) shall require approval of the Board of County Commissioners.
- B. Contract Amendments. Contract amendments, other than change orders, which provide for the alteration of specifications, delivery point, time, payments, quantity, or similar provisions of a contract without changing the scope of the project may be approved by an appropriate person based upon the dollar value of the amendment. The purchasing categories' thresholds designated in Sections 5 through 5.09 shall govern the appropriate level of approval.

Section 6.4 ASSIGNMENTS OF CONTRACTS

No agreement made pursuant to any section of this policy shall be assigned or sublet as a whole or in part without the written consent of the County nor shall the contractor assign any monies due or to become due to the contractor hereunder without the previous written consent of the County.

Section 6.5 RIGHT TO INSPECT PLANT

The County may, at its discretion, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded, or to be awarded, by Leon County. The right expressed herein shall be included in all contracts or subcontracts that involve the performance of any work or service involving Leon County.

Section 7 RIGHTS OF BOARD OF COUNTY COMMISSIONERS

Nothing in this Policy shall be deemed to abrogate, annul, or limit the right of the Board, in the best interests of the County, to reject all bids received in response to a request, to determine in its sole discretion the responsiveness and responsibility of any bidder, to approve and authorize or to enter into any contract it deems necessary and desirable for the public welfare, or to vary the requirements of the Policy in any instance when necessary and desirable for the public welfare.

Section 8 COUNTY PROCUREMENT RECORDS

- A. Procurement Files. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the County in appropriate files by the Purchasing Director.
- B. Retention of Procurement Records. All procurement records shall be retained and disposed of by the County in accordance with records retention guidelines and schedules established by the State of Florida.

Section 9 SPECIFICATIONS

Section 9.1 MAXIMUM PRACTICABLE COMPETITION

All specifications shall be drafted to promote overall economy and encourage competition in satisfying the County's needs and shall not be unduly restrictive. This policy applies to all specifications including, but not limited to, those prepared for the County by architects, engineers, designers, and draftsmen.

Section 9.2 USE OF BRAND NAME OR EQUIVALENT SPECIFICATIONS

- A. Use. Brand name or equivalent specifications may be used when the Purchasing Director determines that:
 - 1) no other design, performance, or qualified product list is available;
 - 2) time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - 3) the nature of the product or the nature of the County requirements makes use of a brand name or equivalent specification suitable for the procurement; or
 - 4) use of a brand name or equivalent specification is in the County's best interests.

- B. Designation of Several Brand Names. Brand name or equivalent specifications shall seek to designate three, or as many different brands as are practicable, as "or equivalent" references and shall further state that substantially equivalent products to those designated may be considered for award.
- C. Required Characteristics. Unless the purchasing agent determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equivalent specifications shall include a description of the particular design, functional, or performance characteristics required.
- D. Nonrestrictive Use of Brand Name or Equivalent Specifications. Where a brand name or equivalent specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.
- E. Determination of Equivalents. Any prospective bidder may apply, in writing, for a pre-bid determination of equivalence by the Purchasing Director. If sufficient information is provided by the prospective bidder, the Purchasing Director may determine, in writing and prior to the bid opening time, that the proposed product would be equivalent to the brand name used in the solicitation.
- F. Specifications of Equivalents Required for Bid Submittal. Vendors proposing equivalent products shall include in their bid submittal the manufacturer's specifications for those products. Brand names and model numbers are used for identification and reference purposes only.

Section 9.3 BRAND NAME SPECIFICATIONS

- A. Use of Brand Name Specifications. Since use of a brand name specification is restrictive of product competition, it may be used only when the Purchasing Director makes a determination that only the identified brand name item or items will satisfy the County's needs.
- B. Competition. The Purchasing Director shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 5.10, Sole Source Purchases.

Section 10 ETHICS IN PUBLIC CONTRACTING

Section 10.1 CRIMINAL PENALTIES

To the extent that violations of the ethical standards of conduct set forth in this Section constitute violations of the State Criminal Code they shall be punishable as provided therein. Such penalties shall be in addition to civil sanctions set forth in this part.

Section 10.2 EMPLOYEE CONFLICT OF INTEREST

- A. Participation. It shall be unethical for any County employee to participate directly or indirectly in a procurement contract when the County employee knows that:
- 1) the County employee or any member of the County employee's immediate family (father, mother, brother, sister, child, grandparent, or grandchild of employee or spouse) has a financial interest pertaining to the procurement contract; or
 - 2) any other person, business, or organization with whom the County employee or any member of a County employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.
- B. Blind Trust. A County employee or any member of a County employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

Section 10.3 CONTEMPORANEOUS EMPLOYMENT PROHIBITED

It shall be unethical for any County employee who is participating directly or indirectly in the procurement process to become or to be, while such a County employee, the employee of any person contracting with the County.

Section 10.4 USE OF CONFIDENTIAL INFORMATION

It shall be unethical for any employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

Section 10.5 WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT PROHIBITION AND OTHER CONFLICTS OF INTEREST

The County Administrator may grant a waiver from the employee conflict of interest provision or the contemporaneous employment provision upon making a written determination that:

- A. the contemporaneous employment or financial interest of the County employee has been publicly disclosed;
- B. the County employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and
- C. the award will be in the best interest of the County.

Section 10.6 GRATUITIES AND KICKBACKS

- A. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee, or for any County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a

purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or performing in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, subcontract, or to any solicitation or proposal therefor.

- B. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- C. Contract Clause. The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefor.

Section 10.7 SANCTIONS

- A. Employee Sanctions. Upon violation of the ethical standards by an employee, the County Administrator, Purchasing Director, or other appropriate authority may:
 - 1) impose one or more appropriate disciplinary actions as defined in the County Personnel Rules and Regulations, up to and including termination of employment; and,
 - 2) may request investigation and prosecution.
- B. Nonemployee Sanctions. The Board may impose any one or more of the following sanctions on a nonemployee for violation of the ethical standards:
 - 1) written warnings;
 - 2) termination of contracts; or
 - 3) debarment or suspension as provided in Section 15.

Section 10.8 RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS

- A. General Provisions. The value of anything being transferred or received in breach of the ethical standards of this policy by a County employee or a nonemployee may be recovered from both County employee and nonemployee.
- B. Recovery of Kickbacks by the County. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the County and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickback. Recovery from one offending party shall not preclude recovery from other offending parties.

Section 11 FEDERAL POLICY NOTICE

Section 11.1 PATENTS

If a contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, then the contract shall include the following provisions.

- A. Notice to Contractor. The contract shall give notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of, and rights to, any discovery or invention arising out of the contract.
- B. Notice by Contractor. The contract shall require the contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

Section 11.2 NOTICE OF FEDERAL PUBLIC POLICY REQUIREMENTS

- A. Applicability. If the contract is being funded in whole or in part by assistance from any federal agency, the contract is subject to one or more federal public policy requirements such as:
 - 1) equal employment opportunity;
 - 2) affirmative action;
 - 3) fair labor standards;
 - 4) energy conservation;
 - 5) environmental protection; or
 - 6) other similar socio-economic programs.
- B. Notice. The Purchasing Director shall include in the contract all appropriate provisions giving the contractor notice of these requirements. Where applicable, the Purchasing Director shall include in the contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

Section 12 INSURANCE REQUIREMENTS

- A. Minimum Requirements. Contractor shall purchase and maintain such insurance as will protect it from claims under Workers' Compensation laws, disability benefit laws or other similar employee benefit plans; from claims or damages because of bodily injury, occupational sickness or disease or death of its employees and claims insured by usual personal injury liability coverage in amounts determined by the provisions of the Risk Management Policy.

- B. **Certificates of Insurance.** Certificates of Insurance acceptable to the County shall be filed with the Purchasing Division prior to the commencement of the work and periodically thereafter upon any renewals during the term of the contract.
- C. **Cancellation Clause.** These Certificates of Insurance shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the County. The cancellation clause should read as follows: "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail thirty (30) days written notice to the certificate holder named herein."
- D. **Change of Insurance Requirements.** The Board of County Commissioners reserves the right to change the insurance requirements based on the project scope, or when determined in the best interest of the County.

Section 13 BONDS AND DEPOSITS

When any of the following bonds is (are) required, the bond(s) will be requested in the bid document. No work in connection with the fulfillment of a contract shall commence until the appropriate bond(s) is (are) accepted by the County.

Section 13.1 TYPES OF BONDS AND DEPOSITS:

- A. **Combination Payment and Performance Bond** - This type of bond is required for repairs, renovations, new construction, and other public works costing in excess of \$50,000. For projects less than that amount, it may be required at the discretion of the Purchasing Director with the approval of the County Administrator or his designee. When a payment and performance bond is required, the bond will be requested in the bid document. No work in connection with the fulfillment of a contract shall commence until the payment and performance bond is accepted by the County.
- B. **Performance Bond** - For a project of an estimated value less than \$50,000, requirement of a performance bond will be at the discretion of the Purchasing Director with the approval of the County Administrator or his designee. For projects estimated to be \$50,000 or more, such bond will be required to insure that a contract is carried out in accordance with the applicable specifications and at the agreed contract price.
- C. **Payment and Material Bond** - For a project of an estimated value less than \$50,000, requirement of a payment and material bond will be at the discretion of the Purchasing Director with the approval of the County Administrator or his designee. For projects estimated to be \$50,000 or more, such bond will be required to protect the County from suits for non-payment of debts which might be incurred by a contractor's performance for the County.
- D. **Warranty Bonds** - At the discretion of the Purchasing Director, after consultation with user departments, a Warranty Bond may be required from a successful bidder to insure warranty provisions are fulfilled.

- E. Guaranty of Good Faith Deposit (Bid Deposit) - For projects estimated to be less than \$40,000, requirement of a bid bond will be at the discretion of the Purchasing Director with the approval of the County Administrator or his designee. For purchases where it is determined by the Purchasing Director to be in the best interest of the County, and projects estimated to be \$40,000 or more, bidders will be required to submit with their bid or proposal a guaranty of good faith deposit. When in the best interest of the County, it is recommended by the Purchasing Director and approved by the County Administrator or his designee, these requirements may be waived.
- 1) Return of Bond. Such deposit may not be withdrawn until a specified time after the proposals are opened and awards made. The deposit of the bond shall be retained by the Finance Officer of the Board until the Purchasing Director is satisfied that the Contractor's obligations have been satisfactorily completed.
 - 2) Substitutes. In lieu of a surety bid bond, contractor may submit a certified check, cashier's check or treasurer's check, on any national or state bank. Such deposits shall be in the same percentage amounts as the bond. Such deposits shall be retained by the Finance Officer of the Board until all provisions of the contract have been complied with.
- F. Irrevocable Letter of Credit. Upon approval of the Purchasing Director, a contractor may present an Irrevocable Letter of Credit from a national or state chartered bank in lieu of any of the foregoing bonds for the same face value as required for the bond. The letter of credit shall be for a period of time not less than three months beyond the scheduled completion date of the purchase of the contracted services or materials.
- G. Retention of Payments. The County may require the payment for a project, or a portion thereof, be withheld until the project has been completed as a method of protecting the County's interest. Retention may also be used in lieu of the above listed bonds. The solicitation documents shall specifically state if retention of any portion or all of the payment for the project is to be done.

Section 13.2 AMOUNT OF BOND OR DEPOSIT

- A. Amount of Bond. Bonds or deposits which may be required shall normally be in the following amounts, except as provided in the following subsection B.
- 1) Performance Bond: 100% of contract price.
 - 2) Payment Bond: 100% of contract price.
 - 3) Payment and Performance Bond: 100% of contract price.
 - 4) Guaranty of Good Faith Deposit (Bid Deposit or Bond): The bid deposit will be 5% of the price bid by the vendor.
- B. Exceptions to Amount of Bond. Any of the above listed bonds may be required at another amount recommended by the Purchasing Director and approved by the County Administrator or his designee when in the best interest of the County.

Section 13.3 PROCESSING OF BONDS AND DEPOSITS:

- A. Responsibility for Securing Bonds. The contractor shall be responsible for securing the bond. Any costs may be included in the contract price.
- B. Licensure of Bonding Company. The company acting as surety for any bond issued shall be licensed to do business in the State of Florida.
- C. Review of Bonds by County Attorney. Surety bonds furnished will be reviewed by the County Attorney, who shall either accept or reject it for the Board. All surety bonds accepted shall be forwarded to the Finance Officer of the Board by the Purchasing Director to be filed in the official records of the Board.
- D. Failure to Provide Required Bond. In the event a contractor fails to provide an acceptable bond when required, within ten (10) days after notification, the County Attorney will be notified. Upon the recommendation of the County Attorney, the Board may declare the contract null and void, and retain in the account of Leon County any good faith deposits or guaranty which may have been submitted as liquidated damages under the terms of the solicitation.
- E. Filing of Bonds. Bonds, when accepted, shall be forwarded to the Finance Officer of the Board and shall be filed with the applicable contract documents.
- F. Deposits. Cash deposits (cashier's check, money orders, bank drafts, etc.) of all bidders shall be forwarded to the Finance Officer of the Board for deposit to the account of the Board of County Commissioners. Upon award of contract, the Purchasing Director or designee shall be responsible for approving the return of deposits to unsuccessful bidders.
- G. Plans and Specification Deposit/Fees. The Purchasing Director is authorized to assess reasonable deposits and/or fees, not to exceed the cost of reproduction, for plans and specifications issued as a part of invitations for bids or requests for proposals. Deposits of all bidders for plans and specifications shall be forwarded to the Finance Officer of the Board for deposit to the account of the Board of County Commissioners. Upon award of contract, the Purchasing Director or designee shall be responsible for approving the return of refundable deposits to unsuccessful bidders. Fees are to be deposited into the account from which applicable reproduction costs are paid.

Section 14 PAYMENT TO VENDORS

- A. Outright Purchases. Payment of invoices shall be made within thirty (30) days of receipt of invoice. All invoices shall be approved by the department or division head, or authorized designee and submitted to the Finance Officer of the Board for payment.
- B. Contractual Purchases. Payment of invoices shall be made in accordance with the contract terms, conditions, and scopes of services being provided.
- C. Prompt Payment Act. All payment to vendors shall also be in accordance with the amended "Prompt Payment Act", Chapter 89-297, Florida Statutes.

Section 15 AUTHORIZATION TO DEBAR OR SUSPEND VENDOR(S)

- A. Suspension. After consultation with the County Attorney, the Purchasing Director is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed three (3) months, and the Purchasing Director shall immediately inform the Board and provide notice to the affected person.
- B. Debarment. After reasonable notice and a reasonable opportunity for the suspended person to be heard, the Board shall either disbar such person or terminate the suspension. The debarment should be for a period of not more than three (3) years.
- C. Causes for Debarment. The causes for debarment include:
 - 1) entry of a plea of guilty, no contest, or nolo contendere to or conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 - 2) entry of a plea of guilty, no contest, or nolo contendere to or conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County contractor;
 - 3) entry of a plea of guilty, no contest, or nolo contendere to or conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
 - 4) violation of contract provisions, as set forth below, of a character which is regarded by the Board to be so serious as to justify debarment action:
 - a) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
 - 5) having been adjudicated guilty of any violation by the Leon County Contractor's Licensing Board, or the State of Florida Construction Industry Licensing Board within the past twelve (12) month period at the time of bid submittal;
 - 6) having been adjudicated guilty by the Leon County Code Enforcement Board of any violation of an environmental ordinance within the past six (6) month period at the time of bid submittal; and
 - 7) any other cause the Purchasing Director or Board determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity.

- D. Notice of Decision. The Purchasing Director shall issue a written notice to the person of the decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his/her rights concerning judicial or administrative review. The written decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

Section 15.1 APPEAL OF DECISION TO DEBAR OR SUSPEND

The Board's decision to debar or suspend a person or business shall be final and conclusive, unless the debarred person commences a timely action in court in accordance with applicable law.

Section 16 MINORITY BUSINESS ENTERPRISE PARTICIPATION PROGRAM

A. Purpose and Scope

The purpose of the Minority/Woman-Owned Business Enterprise (MWBE) Program is to enhance the participation of qualified minority and women-owned businesses in providing goods and services and construction contracts required by the Board of County Commissioners. This program describes procedures to accomplish this purpose and to monitor and evaluate progress. All Departments and Divisions under the jurisdiction of the Leon County Board of County Commissioners are responsible for implementing this program. The scope of this program shall include:

- 1) Identify and work to eliminate barriers that inhibit MWBE participation in Leon County's procurement process.
- 2) Establish realistic goals to increase MWBE utilization.
- 3) Provide information and assistance to MWBEs regarding procurement opportunities with Leon County.
- 4) Implement mechanisms and procedures for monitoring MWBE compliance by prime contractors and staff.
- 5) Implement mechanisms to evaluate the program's progress.

B. Policy Statement

- 1) It is the policy intent of Leon County to afford maximum utilization of the MWBE program in all aspects of the County's procurement activity and to award contracts with MWBE participation consistent with the aspirational goals contained herein.
2. All aspirational goals will apply except in the cases where vendors are not classified as minority or non-minority vendors and/or there are not alternative providers. In these cases, the following exemptions will be applied: Government Agencies/Entities, Organizations (Boys Choir, ECHO, United Way, etc.), Employees and/or Persons (not Business Related), and Other Adjustments (telephones, utilities, office rent, etc.).

- 3) It is further the policy of Leon County that the percentages outlined in this section shall be established aspirational goals for MWBE participation in Leon County's procurement processes. These goals represent the minimum level of minority business participation and are subject to change on a case-by-case basis contingent upon the availability of MWBE's within each contracting and procurement categories.

Construction:

Black: 8.5 - 11.5%

Women: 9.0%

Others: 0.5%

Composite Aspirational Goal: 21%

Professional Services:

Black: 2.0 - 3.0%

Women: 6.0 - 8.0%

Others: 3.0 - 4.5%

Composite Aspirational Goal: 15.5%

Other Services:

Black: 0.0%

Women: 15.0 - 20.0%

Hispanic: 15.0 - 20.0%

Others: 18.0 - 24.5%

Composite Aspirational Goal: 64.5%

Materials and Supplies (Contracts):

Black: 6.0 - 8.5%

Women: 9.5 - 13.0%

Others: 3.0 - 4.5%

Composite Aspirational Goal: 26%

Purchases:

Black: 7.0 - 9.5%

Women: 11.0 - 14.5%

Others: 7.0 - 9.5%

Composite Aspirational Goal: 33.5%

4. The MWBE Office shall be responsible for recommending to the Board any modification to the MWBE aspirational goals. Only the dollars expended with certified MWBE firms from the local market area, as defined in Section C. 2 of the Definitions shall be counted toward satisfying the MWBE participation goals.
- 5) All departments and divisions under the jurisdiction of the Board of County Commissioners are responsible for implementing this program and for making every reasonable effort to utilize MWBEs when opportunities are available.

The MWBE Coordinator shall coordinate the process by taking active steps to encourage full participation of qualified capable, competent and competitive minority or women owned businesses. This will involve monitoring MWBE participation levels and informing staff of MWBE availability.

- 6) Regarding the implementation of this policy, it is the Board's intent to foster more economic development in the Leon County area by establishing its MWBE goals based on availability of minority and women-owned businesses located within Leon County as identified by the 1994 Leon County Disparity Study and subsequent revisions.

- 7) For contracts of \$100,000 or less, where there is a disparity of 1% or less between the total of the base bid and all recommended alternates of a 100% owned and operated minority business enterprise and the apparent lowest bid which is from a non-minority business enterprise, and all other purchasing requirements have been met, the contract may be awarded to the minority business enterprise to help achieve the County's goal.

C. Definitions

- 1) Minority/Women Business Enterprise (MWBE) - a business that is owned and controlled by at least 51% by one or more minority persons or by at least 51% by one or more women, and whose management and daily operations are controlled by one or more such persons shall constitute a Minority/Women business Enterprise. No business owned or controlled by a white female shall be considered a minority business for the purpose of this program if the ownership was brought about by transfer of ownership interest to the woman or women, other than by decent, within two (2) years following the sale or transfer of ownership. For the purpose of this program, all applicants for certification as a bona fide MWBE shall be an independent business entity which provides a commercially useful function. No business owned and controlled by a white male and transferred or sold to a minority or woman/women, for the purpose of participation in the County's MWBE Program, shall be considered eligible for MWBE Certification.
- 2) Minority Person - an individual who is a citizen of the United States or a lawfully admitted permanent resident and who is a(n):
 - a. African/Black Americans - All persons having origins in any of the Black African racial groups not of Hispanic origins and having community identification as such.
 - b. Hispanic Americans - All persons (Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race) reared in a Hispanic environment and whose surname is Hispanic and having community identification as such.
 - c. Asian American - All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands and having community identification as such.
 - d. American Indians, Alaskan Natives and American Aleuts - All persons having origins in any of the original people of North America, maintaining identifiable tribal affiliations through membership and participation and having community identification as such.
 - e. Women- American Woman
- 3) Business Categories

- a. Construction - Services that include the building, attaining, repairing, improving, or demolishing any public structure or building, or other public improvement of any kind to any public real property. It does not include routine operation, routine repair, or routine maintenance of existing buildings or facilities.
 - b. Professional Services- Any service provided by a person or firm that is of a professional nature, with special licensing, educational degrees, and unusual or highly specialized expertise. Examples include, but are not limited to: Architectural or Engineering Services, Financial Services, Legal Services, Medical Services and Advertising/Marketing Services.
 - c. Other Services - Any service that is labor intensive and not professional or construction related. Examples include, but are not limited to: maintenance services, janitorial services, lawn services, employment services, and printing services.
 - d. Materials and Supplies/Purchases - The equipment and consumable items purchased in bulk, or deliverable products. Examples of such include, but are not limited to: equipment and parts, chemicals, paper products.
- 4) Good Faith Committee - A standing committee whose purpose is to determine the validity of a vendor's good faith efforts as it relates to specified MWBE participation for bids, RFPs and contracts (see section 16 subsection L).
- 5) Joint Venture:
- a) two or more persons/corporations combining their labor, resources, and expertise for a single undertaking. The profits and losses are shared equally or according to a contract. There is a common interest of purpose and each "partner" has the equal right to control of the operation or activity of the venture without an agreement to the contrary; or
 - b) a combination of contractors performing a specific job in which business enterprises participate and share a percentage of the net profit or loss; or
 - c) a joint business association of minority individual(s)/firm(s) as defined herein, and a non-minority individual(s)/firm(s) to carry out a single business enterprise for which purpose the individuals/firms combine their property, money, efforts, skills and/or knowledge.
- 6) MWBE Certification - the verification of the authenticity of a minority or women-owned business enterprise to determine eligibility for participation in the County's MWBE Program.

- 7) MWBE Aspirational Goals - the set percentages or dollar amount specified by a bid or an RFP for Minority and Women-owned Businesses' participation in the procurement of goods and services. These percentages and/or dollar amounts are based on available MWBEs identified in the 1994 Leon County Disparity Study and any subsequent updates. MWBE goals may also apply to contracts, purchases and departmental budget expenditures.
- 8) MWBE Front - a business that intentionally and/or falsely holds itself out as a business with at least 51% ownership by a minority(ies) and/or is also managed by a minority(ies), when in fact it is not.
- 9) Participation Plan - The participation plan is the response provided by the bidder or proposer as a part of their bid or proposal and which provides the detailed information in response to the aspirational goals contained In the invitation to bid or request for proposals.
- 10) Prime Contractor - a person or firm who is qualified and responsible for the entire project contracted, usually relating to construction and/or renovation projects. The Prime Contractor may have one or more subcontractors involved in the project.
- 11) Race-Neutral Programs, (as it refers to the County MWBE Program) - those programs and/or agencies whose purpose is to serve and assist businesses regardless of their race or gender. An example of this includes, but is not limited to: the Florida A&M University Small Business Development Center, the Small Business Administration, the State of Florida Commission on Minority Economics and Business Development/Minority Business Advocacy and Assistance Office, and the Tallahassee Chamber of Commerce.
- 12) Subcontractor - a person or firm who performs part or parts of the contracted work of the prime contractor. This shall include, but not be limited to, the labor, materials and/or supplies, and professional services needed for a prime contractor to fulfill the obligations of a County contract.

D. Fulfilling MWBE Participation Requirements for Formal Bids and Requests for Proposals

- 1) Project Review and Documents
 - a) The MWBE Coordinator, a Purchasing representative and an appropriate department representative shall review each proposed project or bid to determine potential for utilization of MWBEs and determine the participation levels in accord with the appropriate MWBE goal. This review is based on known availability of capable MWBEs in the area as it relates to the scope of the bid package and to identify subcontracting opportunities or opportunities for multiple bids.
 - b) Language regarding the Minority/Woman-Owned Business Enterprise Program policy and aspirational goals will be inserted into bid and request for proposal packages specifications to inform prospective bidders and respondents of the requirement to make good faith efforts to utilize MWBEs.

- c) Plans and specifications will be made available to the MWBE Director (along with any special instructions) by the Purchasing Division or originating department(s) for review by MWBE vendors.
 - d) No contractor will be awarded a bid until the contractor has provided specific detailed documentation on how MWBEs will be utilized, and the MWBE participation plan is recommended by the MWBE Coordinator and approved by the Board.
 - e) The MWBE participation plan for a specific project and the contractor commitment to carry out the program will become a part of the contract awarded by the County. Failure to keep these commitments will be deemed as noncompliance with the contract and may result in a breach of the contract.
 - f) A joint venture consisting of minority and non-minority business enterprises will be credited with MWBE participation on the basis of the percentage of the dollar amount of the work to be performed by the MWBEs and any MWBE subcontractors to the total project cost.
- 2) Contractor's Responsibilities
- a) Contractors shall indicate all certified MWBEs to be utilized, their percentage of utilization and their intended scope of work. This documentation shall be submitted with their bid or RFP documents. A contractor's MWBE participation plan will utilize MWBEs to perform commercially useful functions in the work bid. An MWBE is performing a commercially useful function when it is responsible for the management and performance of a distinct element of the total work
 - b) Each Contractor is required to make good faith efforts to obtain MWBE participation when so stipulated by bid specifications or the scope of services. If these efforts are unsuccessful, the contractor will submit a statement of Good Faith as outlined in Section L of these procedures.
 - c) A Contractor who determines that an MWBE named in their bid submittal(s) is unavailable or cannot perform, shall request approval from the MWBE Coordinator to name an acceptable alternate. Such requests will be approved when adequate documentation of cause for the change is presented by the contractor to the MWBE Coordinator.
 - d) After contract execution, the Contractor shall request a change order for any modification to the MWBE participation plan. Change orders are contingent on the Contractor's documentation of MWBE involvement in the change requested and documentation of cause for the change.
- 3) MWBE Contractor's/Subcontractor's Responsibilities

- a) MWBEs shall complete the MWBE certification process managed by the Leon County MWBE Coordinator in order to participate in the Leon County Minority/Woman-owned Business Enterprise Program; or, MWBEs shall be currently certified by the State of Florida, City of Tallahassee, the Florida Department of Transportation or the Leon County School District.
 - b) MWBEs should attend preconstruction conferences to obtain information and technical assistance on projects and bid procedures in which they (MWBEs) have submitted bids.
- 4) Contract Management
- a) Payment will be made by the Leon County Board of Commissioners within thirty (30) days upon acceptance and approval of submitted invoices. The County will provide special consideration to hardship cases upon notification given to the MWBE Coordinator and/or Purchasing Director by the MWBEs. Each contract or purchase order shall contain the payment schedule for the goods and/or services being provided.
 - b) On-Site Monitoring of MWBE Utilization on County Projects. The MWBE Director may perform on-site monitoring of MWBE utilization on County projects. Monitoring may consist of scheduled or unscheduled visits to the project site. This does not exclude the monitoring by additional County staff in the performance of their regular duties.
 - c) Required of each prime contractor is a monthly reporting system of the work done by and payments made to certified minority business enterprises as a part of each project. The reports shall detail each invoice submitted to the County and a break down of payments to all subcontractors therein by MWBE classification.

E. MWBE Citizens Advisory Committee

The Board of County Commissioners may establish an MWBE Citizens Advisory Committee and appoint persons to serve on the Committee at the pleasure of the Commission. The principle purpose of the MWBE Committee is to monitor progress of the Minority Business Enterprise Program toward achievement of program performance goals as established by the Commission. Also the MWBE Citizens Advisory Committee may be asked to provide MWBE policy alternatives and/or review, and make recommendations seeking resolution of compliance complaints, as such involvement by the MWBE Committee is deemed appropriate and is referred to by the County Commission. The size of the Committee and its responsibilities will be determined annually by the Commission.

F. Severability Clause

Each separate provision of this program is deemed independent of all other provisions herein so that if any provision or provisions be declared invalid, all other provisions hereof shall remain valid and in full force and effect.

G. Authority and Responsibilities of MWBE Office

- 1) The administration and management of the MWBE Program on a day-to-day basis.
- 2) Certification of MWBE's.
- 3) Monitor the level of MWBE subcontractor participation specified in a prime contract for compliance and noncompliance with the Contractor's stated commitment as contained in the project contract
- 4) A report, at least annually, shall be provided to the County Commission on the status of the Leon County Minority Business Enterprise Program. Records will be maintained by the MWBE Director reflecting participation of local minority and women owned businesses.
- 5) Review forthcoming County bids, contracts and purchases to generate an awareness by MWBE firms of potential purchase and contractual opportunities.
- 6) Provide assistance to County departments in identifying MWBE businesses and in the development of a MWBE Opportunity and Participation Plan.
- 7) Provide technical assistance and training to MWBE firms to facilitate a better understanding of the County's bidding, contracting and purchasing procedures.
- 8) Provide ongoing public information of the County's policy regarding MWBE participation and identify the MWBE Office as a place for assistance.
- 9) Develop, maintain, and distribute the MWBE Directory.
- 10) Modify MWBE aspirational goals on a case-by-case basis contingent upon the availability of MWBE's in each business category as defined in the definitions section of this policy.
- 11) The MWBE Coordinator may recommend to the Purchasing Director suspension of MWBE firms from the bid list for any of the reasons listed in Section 15 of this policy.

H. Certification Eligibility

An applicant shall meet the following in order to be eligible to be certified :

- 1) Engaged in commercial transactions (for profit).
- 2) Domiciled in Florida.
- 3) Owned at least 51% by minority persons who are: Permanent residents of Florida; and African Americans, Hispanic Americans, Asian Americans, Native Americans or Non-Minority Women.

- 4) Managed and controlled by minority persons.
- 5) Performing a useful business function by: Currently serving customers other than state or local government agencies. Operating as a regular dealer of commodities, making sales regularly from goods maintained in stock; and Carrying out its responsibility to perform, manage and supervise work.
- 6) A small business enterprise which is: Independently owned and operated; Net worth of not more than \$5 million; and Employing 200 or fewer full-time, permanent employees. Or if the business has been recognized as a 8(a) certified business by the federal government. Owned by minority persons who have not acquired their majority ownership's via a transferal from a non-minority spouse, relative or employee within two years.

I. MWBE Certification Process

The process for MWBE certification is as follows:

- 1) Minority Vendor Application Package - Vendors requesting MWBE Certification are sent a Minority Vendor Application Package containing an Instructional Cover Letter and a Minority Vendor Application. The Minority Vendor Application provides the MWBE Office with information regarding the name and address of the company and its owner(s), the gender/race of the owner(s), and a listing of the type of commodities/services it provides. It also provides information regarding the vendor's work/contract history and past earnings.
- 2) Application Evaluation Period - Within thirty days of receipt of a complete Vendor's Application with all applicable attachments by the MWBE Office, it shall be reviewed, evaluated and a determination will be made as to whether the Vendor is certifiable.
- 3) Application Attachments - Documents such as "Proof of Ownership" with the applicant's name on it, a copy of the applicant's most recent pictured identification showing race and gender, the most recent financial statements for the company, as well as the other required documents listed on the application form, shall accompany the completed and notarized application form. Copies of "MWBE Certifications(s)" from other governmental agencies shall also be included, where applicable.
- 4) MWBE Certification Approvals/Denials
 - a) If the vendor is deemed certifiable, they will be notified of their MWBE Certification Approval in writing by the Leon County MWBE Director. The vendor shall then be sent a letter of Certification and a certificate, which indicates the expiration date of their certification. An MWBE certification is valid for one year and shall be renewed annually.

- b) The MWBE office shall be notified by the vendor of any changes in the company during the certification period. These changes may range from a change in ownership to a change in the types of services and/or commodities being provided. If changes occur during the company's certification period, the Vendor's MWBE certification status is reevaluated.
 - c) The MWBE Director reserves the right to reevaluate an MWBE's certification at any time during the certification period.
 - d) If an applicant cannot be determined certifiable based on information provided on the MWBE application (including attachments) or as a result of the MWBE Director's investigation and research, the application for certification will be temporarily denied. The applicant is then notified in writing of the pending denial of MWBE certification. If the reason(s) for their temporary denial of MWBE certification is not resolved within ten (10) business days, the applicant's request for MWBE certification is then officially determined as denied.
 - e) Applicants determined uncertifiable or ineligible shall not be eligible to submit a new application for certification for six (6) months after the notice of the date of the notice of denial of re-certification. or in the event a hearing is held and another determination has occurred.
 - f) An appeal of an MWBE certification denial shall be presented to the MWBE Director in writing within ten (10) working days after receipt of the certification denial letter. The applicant will again be notified of such in writing and advised of their right to appeal. An appeal of an MWBE certification denial will be heard by the MWBE Citizen Advisory Committee.
- 5) MWBE Certification From Other Agencies - The County MWBE Office officially recognizes and accepts the MWBE Certification from the State of Florida (Office of Supplier Diversity), the City of Tallahassee, the Florida Department of Transportation and the Leon County School District.

J. MWBE Re-certification Process

- 1) Certified MWBEs are required to submit a certification application annually for a review of their MWBE status.
 - a) The Office of Supplier Diversity will notify the certified MWBE no later than sixty (60) days prior to the certification expiration date. The MWBE certification application will be accompanied by appropriate instructions.
 - b) Re-certification applications shall be filed in the in the Office no later than the last effective date of the current certification period. Re-certification applications received after expiration of the certification period shall not be considered, unless the reason for the delay is accepted and approved by the MWBE Office, at which time a one-time extension not to exceed 30 days may be granted.

- c) Review of the re-certification application shall follow the same process as for initial application as stated in Section I.
- d) Applicants determined ineligible shall receive a letter from the MWBE Office stating the basis for the denial of the re-certification and shall not be eligible to submit a new application for certification for six (6) months after the notice of the date of the notice of denial of re-certification. or in the event a hearing is held and another determination has occurred. [reference Chapter 38A20.0061(7) of the Florida Administrative Code]
- e) An appeal of an applicant's re-certification denial shall be presented to the MWBE Director in writing within ten (10) working days after receipt of the re-certification denial letter. The applicant will again be notified of such in writing and advised of their right to appeal. An appeal of an MWBE re-certification denial will be heard by the MWBE Citizen Advisory Committee.

K. MWBE Decertification Process - Right of Appeal

- 1) Leon County reserves the right to revoke the certification and/or re-certification of an MWBE business at any time such action is deemed necessary. Grounds for revocation of certification and re-certification shall include but are not limited to the following:
 - a) Submission of fraudulent information as part of the certification or re-certification process.
 - b) Failure to promptly report any change in ownership or control of the firm.
 - c) Failure to promptly report any name, address or telephone number changes of the firm.
 - d) Failure to respond to request from the MWBE Office.
 - e) Fraudulent representation or participation on County projects or contracts.
 - f) Submittal of fraudulent information or documentation to the County as may be requested as part of the normal procurement process.
 - g) Revocation of certification or re-certification revoked by the State of Florida Office of Supplier Diversity, the City of Tallahassee, the Florida Department of Transportation or the Leon County School District.
- 2) Any business having its certification or re-certification revoked by the MWBE Office shall have the right to appeal such certification revocation. An appeal of an applicant's re-certification denial shall be presented to the MWBE Director in writing within ten (10) working days after receipt of the revocation letter.

- 3) The notice of appeal shall indicate the reason(s) why and provide additional information, if appropriate, as to why the business believes the certification status was in error. The business will again be notified of such in writing and advised of their right to appeal. An appeal of a business revocation will be heard by the MWBE Citizen Advisory Committee.

L. Good Faith Effort

- 1) When a prime contractor does not meet the stated MWBE aspirational goals, it is the responsibility of the prime contractor to prove that they employed good faith efforts to obtain the stated MWBE participation. Evidence supporting their good faith efforts shall be provided with their bid documents at the assigned opening date and time.

Documentation demonstrating their good faith efforts shall include, but is not limited to the following:

- a) When a prime contractor's MWBE participation is less than 100% of the stated MWBE goal(s), proof of MWBE certification for the MWBEs that are being used shall be included with the bid documents and the good faith effort documentation.
- b) Prime contractors shall show proof of having advertised for bids from MWBEs in non-minority and minority publications circulated in the Leon County, Florida area. A copy of the advertisement and proof of the date(s) it appeared in the publication shall be included in the good faith effort documentation.
- c) Prime contractors will prove that they provided ample time for MWBE subcontractors to respond to bid opportunities. A chart outlining the schedule/time frame used to obtain bids from MWBEs shall be included with the good faith effort documentation.
- d) Only contacts by the prime contractor with MWBEs who provide the services needed for the contract will be considered evidence of good faith efforts. A list of all MWBEs that were contacted shall be included in the good faith efforts documentation. The prime contractor shall also show proof that the MWBE Director was contacted regarding available MWBEs and that MWBEs recommended by the MWBE Director were contacted regarding their participation.
- e) Prime contractors will show proof of follow-up telephone calls with potential MWBE subcontractors encouraging their participation. Telephone logs indicating such shall be included with the good faith effort documentation.
- f) Prime contractors will allow MWBE subcontractors to review bid specifications, blue prints and all other bid/RFP related items at no charge to the MWBEs. The prime contractor shall allow sufficient time for such, thus allowing MWBEs to participate effectively. Information regarding such shall be included with the good faith effort documentation.

- g) Prime contractors will negotiate in good faith with interested MWBEs, not rejecting an MWBE as unqualified or unacceptable without sound reasons based on a thorough investigation of their capabilities. The basis for rejecting any MWBE deemed unqualified or unacceptable by the prime contractor shall be included in the good faith effort documentation. The prime contractor will not impose unrealistic conditions of performance on MWBEs seeking subcontracting opportunities. The condition of performance expected of the MWBEs by the prime contractor shall be included with the good faith documentation.
 - h) The prime contractor shall include documentation indicating that they have contacted the MWBE Director regarding any problem meeting MWBE aspirational goal(s) stated in the Bid/RFP.
 - I) Prime contractors may include any other documentation further proving their good faith efforts with their bid documents.
- 2) Good Faith Committee
 - a) The good faith efforts submitted by a prime contractor not meeting the MWBE goal(s) shall be evaluated by a standing Good Faith Committee. This committee shall be chaired by the MWBE Director. Other members of the committee shall consist of the Purchasing Director or his or her designee, and a representative of the MWBE Citizens Advisory Committee.

Any additions or deletions to this committee shall be at the discretion of the County Administrator or the County Administrator's designee.
 - b) The Good Faith Committee shall make a formal determination of good faith made by bidders and prepare a written report of such as part of the bid analysis.

M. Substitution of MWBEs After Contract Award

The MWBE Director, with assistance from technical staff, is responsible for approving or disapproving the substitution of any MWBE on a contract after an award. An MWBE may be replaced by the MWBE Director with the provision that:

- 1) The Prime Contractor has provided the MWBE Director with documentation regarding the poor work performance level of the MWBE in question.
- 2) The Prime Contractor has provided the MWBE Director with documentation regarding unsuccessful measures taken to improve the work performance level of the MWBE in question.

- 3) The Prime Contractor has worked with the MWBE Director and County staff without success to improve the work performance level of the MWBE in question. If the MWBE's work performance level has not improved to the expected contractual level, MWBE Director will consult with the prime contractor and the County's technical staff regarding the approval and/or disapproval of an MWBE substitute.
- 4) Prime Contractors who substitute MWBEs without the prior written approval of the MWBE Office may be subject to actions for breach of contract and dollars spent with the unauthorized MWBE will not be counted towards satisfaction for meeting the MWBE aspirational goal. The prime contractor will still be responsible for meeting the MWBE aspirational goals as stated in the original contract.

N. Non-Compliance With MWBE Policies

The following conditions will apply when there is noncompliance by contractors with the County's Minority Women Business Enterprise Policies:

1) Assistance for Contractors - Meeting MWBE Participation Requirements

MWBE Director will monitor the level of MWBE utilization by prime contractors. If a contractor is having difficulties meeting the contractual MWBE goal(s), the MWBE Director will help the contractor develop and implement corrective measures.

2) Penalties for Contractors Not Meeting Promised MWBE Goals

If a contractor's MWBE participation falls below that provided for in the contract for goods or services, the contractor shall be in breach of the contract. The MWBE Director shall investigate whether a breach of contract has indeed occurred. Upon a determination by the MWBE Director that a breach has occurred, all payments under the contract may be immediately suspended. The County's Attorney's Office shall be fully involved throughout this process. The findings and determination of the MWBE Director (in conjunction with the County's legal staff) shall be forwarded to the Good Faith Committee for a determination as to whether the contractor made a good faith effort to comply with the requirements of the contract.

The contractor will submit information in writing to the Good Faith Committee that the contractor attempted (through reasonable and objective means and in good faith) to meet the MWBE participation goal established by the contract, but was unable to do so. If the Good Faith Committee determines that the contractor did not act in good faith, all amounts paid to the contractor under the contract, intended for expenditure with an MWBE, shall be forfeited and recoverable by the County.

In addition, the contract may be rescinded and the County may return all goods received and recover all amounts paid under the contract. Resolution of good faith issues shall occur within the time frames specified in the Prompt Payment Act, Florida Statutes, Chapter 218, as amended.

Contractors that fail to comply with program and/or contractual requirements may face suspension from bidding on future Leon County contracts for a period of six months to one year, or longer, as recommended by the Good Faith Committee for action by the County Commission.

3) Penalties for Non-MWBEs and MWBEs that defraud the MWBE Program.

Any vendor (MWBE or Non-MWBE) suspected of defrauding the County and/or MWBE Program will be referred to the MWBE Director and the County Attorney's Office for review, investigation and possible legal action. Any monetary penalties imposed on the vendor found to have defrauded the County and/or MWBE Program shall be in keeping with State and Federal Law.

(Section 16 Adopted September 10, 1991, replaced by separate policy 1/16/96)

**Section 17 PROCUREMENT FOR COMMUNITY DEVELOPMENT BLOCK GRANT
HOUSING PROGRAM**

- A. It is the policy of the Board of County Commissioners to obtain commodities and services efficiently and effectively in free and open competition for the Community Development Block Grant Housing Program through the use of sound procurement practices. All County staff and other persons (subgrantees or contractors) with designated responsibility for the administration of CDBG award contracts are responsible for ensuring compliance with all applicable federal and state laws and regulations. These include but are not limited to: OMB Circular A-102, Attachment O; 24 CFR Part 85 Section 85.36; s. 287.055, Florida Statutes; s. 290.047, Florida Statutes; Chapter 9B-43, Florida Administrative Code and the Purchasing Policy of the Leon County Board of County Commissioners
- B. The County Purchasing Policy shall govern the procurement of commodities and services for the Community Development Block Grant Housing Program except as provided in this section.
- 1) All procurement of commodities or services in excess of \$500 shall require a written agreement embodying all provisions and conditions thereof.
 - 2) All procurement of commodities or services in excess of \$500 and less than \$2,500 may be entered only after informal competition based on offers or quotes from not less than three (3) vendors.
 - 3) Publication of public notice for invitations to bid or requests for proposals and notification of the solicitation through distribution to potential bidders or offerors shall be required for all procurement in excess of \$2,500. The time frames in section 5.08 of this policy shall apply for the required public notice.
 - 4) Except as may otherwise be provided by law, procurement awards shall be made only on the basis of requirements and evaluation factors related to the price or quality of the commodities or services or to the ability of the prospective supplier or contractor to

perform under the agreement. In evaluating the ability of a prospective contractor to perform, the County shall at a minimum consider the prospective contractor's record of past performance under CDBG grants.

- 5) Nothing herein shall limit the County to except from the requirement of competition commodities and services available only from a single source (Section 5.10, Sole Source Purchases) or procurement from another unit of government (Section 5.12, Cooperative Purchasing).

(Section 17 Adopted November 25,1997)